Landscape Conservation in the Context of Increasing Wind Power in accordance with the Energy Objectives

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EU:n asettamien sitovien energiatavoitteiden mukaan Suomen tulisi edistää ja tukea siirtymistä kohti uusiutuvaa energiaa. Kansallisen energia- ja ilmastostrategian mukaan uusiutuvista lähteistä peräisin olevan energian osuuden tulisi kattaa 50% energian kokonaisloppukulutuksesta 2030 vuoteen mennessä. Tuulivoiman kokonaiskapasiteetti oli yhteensä 2041 MW vuoden 2018 lopussa. Helmikussa 2019 tiedossa olevien hankkeiden osalta Suomen Tuulivoimayhdistys ry on julkaissut hankekartoituksen, jonka mukaan suunnitteilla on yhteensä 16 500 MW:n verran tuulivoimaprojekteja ja hankelistan mukaan Suomeen rakennetaan yhteensä 374,3 MW:n edestä tuulivoimaloita ilman valtion tukea.

Näkyvin ympäristöhaitta tuulivoimaloista koituu maisemalle. Tämän lainopillisen tutkielman tarkoituksena on selvittää, onko maisemansuojelu riittävää tuulivoimaloiden osalta ja toisaalta rajoittaako se energiatavoitteiden toteutumista Suomessa. Nykyisen lainsäädännön ja ohjeistusten valossa on todettava, että maisemavaikutukset otetaan huomioon ja arvioidaan laajasti ja perusteellisesti.

Tuulivoimaa koskevat tavoitteet on otettu huomioon valtakunnallisissa alueidenkäyttötavoitteissa. Kuten kestävä kehitys on ohjaava periaate läpi maankäyttö- ja rakennuslain, myös uusiutuvan energian tavoitteiden tulisi ilmetä kyseisestä laista, jotta niiden merkitys ja edistäminen ohjaisi selkeämmin kaavoitusta.

Avainsanat: uusiutuva energia, tuulivoima, maisemansuojelu, kaavoitus

Muita tietoja:

Suostun tutkielman luovuttamiseen Rovaniemen hovioikeuden käyttöön x

Suostun tutkielman luovuttamiseen kirjastossa käytettäväksi x

Suostun tutkielman luovuttamiseen Lapin maakuntakirjastossa käytettäväksi x

(vain Lappia koskevat)

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Pohjois-Suomen HaO 28.11.2017 17/0281/1.

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Abbreviations

COP21	21st Conference of the Parties
EIA ACT	Act on Environmental Impact Assessment Procedure
EIA –procedure	Environmental Impact Assessment Procedure
ELY –centre	Centre for Economic Development, Transport and the Environment (*fi*: Elinkeino-, liikenne- ja ympäristökeskus)
EU	European Union
HaO	Administrative Court (*fi*: hallinto-oikeus)
HE	Government Proposal (*fi*: hallituksen esitys)
IPCC	Intergovernmental Panel on Climate Change
KHO	Supreme Administrative Court (*fi*: korkein hallinto-oikeus)
LSL	Nature Conservation Act (*fi*: luonnonsuojelulaki)
MRA	Decree on the Land Use and Building (*fi*: maankäyttö- ja rakennusasetus)
MRL	Land Use and Building Act (*fi*: maankäyttö- ja rakennuslaki)
MWh	Megawatt hours
PeVM	Report of the Committee for Constitutional law (*fi*: perustuslakivaliokunnan mietintö)
TWh	Terawatt hours
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VNS	Government report (*fi*: valtioneuvoston selonteko)
vp	Parliamentary session (*fi*: valtiopäivät)
YmVM	Environment Committee report (*fi*: Ympäristövaliokunnan mietintö)

1. INTRODUCTION

1.1. Background

1.1.1. Wind Power and Targets for Renewable Energy in Finland

Wind power has roots going back to year 644 in Persia. In Europe, the construction of windmills did not begin until in the 1100s. The first wind power plant from 1890 was 20 meters high[1], today reaching almost the height of 180 meters.[2] There were about 10,000 windmills in Finland at the end of the 19th century.[3] Currently there are over 700 installed wind power plants[4] producing 4.8 TWh, which is 5.6% of the total electricity consumption in Finland. In 2017, 153 new wind power plants were built in Finland and wind power capacity increased by 516 MW. The Finnish Wind Power Association has published a list of all wind power projects and according to the project list, wind power projects for nearly 15.500 MW are under planning. There are in total 340.2 MW wind power projects that will be constructed by 2019 without any state subsidy.[5] There was no wind power plant built in 2018. One reason for that was the preparation and implementation of the new Act on Production Subsidy for Electricity Produced from Renewable Energy Sources (1393/2010) that entered into force on 25 June 2018. Construction is expected to take off once the first bidding round has been completed.[6] In comparison, the total amount of installed wind power in Sweden at the end of 2016 was 6 430 MW and the total production of electricity was 15 TWh, which corresponds to about 9% of the total electricity consumption.[7]

The United Nations Intergovernmental Panel on Climate Change released on 8 October 2018 a report for policymakers to warn of the impacts of the global warming of 1.5 °C above pre-industrial levels. The report presents the impacts caused by climate change, such as higher risk of drought, floods, extreme heat, wave of refugees and poverty as well as the pathways and steps to be taken to mitigate the global warming. One of the major actions to be taken is to

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[1] *Lindell* 2009 pp. 329-331.
[2] See more about the wind turbine technology at: http://www.tuulivoimayhdistys.fi/tietoa-tuulivoimasta/tietoa-tuulivoimasta/tuulivoimatekniikka.
[3] *Hakala – Välimäki* 2002, pp. 249-250.
[4] In this thesis, the terms ”wind power plant” and ”wind turbine” are used as synonyms.
[5] Project list availabe at: http://www.tuulivoimayhdistys.fi/hankelista.
[6] See more information of year 2018 at: http://www.tuulivoimayhdistys.fi/ajankohtaista/tiedotteet/4199/tuulivoimavuosi_2018_tuulivoimatuotanto_kasvoi_yli_20_prosenttia.
[7] Sveriges Energimydingheten 2016 pp. 5-6.

reduce the emissions of black carbon. Especially in the energy sector a rapid transition is required and the black carbon energy sources shall be replaced by renewable energy.[8] The report itself has had an impact on the media by increased number of articles related to climate change, as well as on people's attitudes towards the measures to be taken to mitigate the climate change. Even though the public opinion does not have direct effect, it can be seen as an entrenching factor in the long-run.

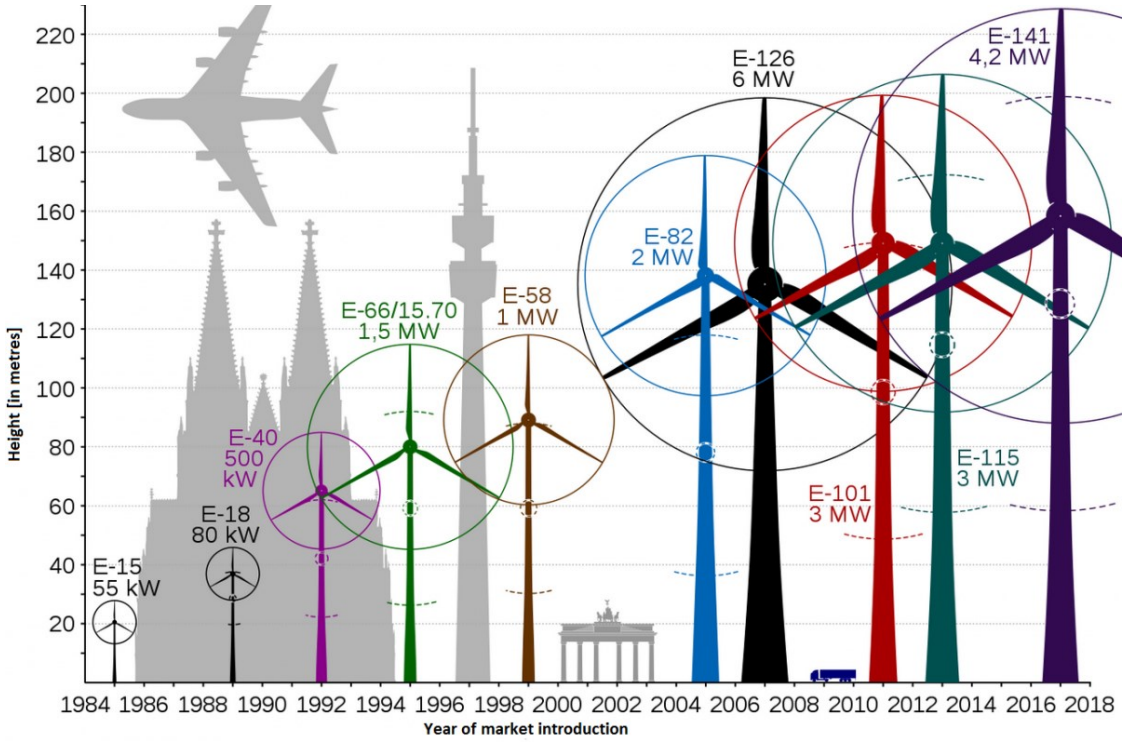
According to the national Energy and Climate strategy, Finland's goal is to be a carbon-neutral society. The current target is to reduce greenhouse gas emission by 80-95% from the 1990 level by 2050. In its strategy, the Government sets out that wind power investments shall be kept interesting and supported in order to develop the technology to become more energy efficient. The target of the Energy and Climate strategy is an annual increase of 2 TWh in renewable electricity. In 2013, the target for wind energy production was set to 9 TWh (about 3,75 MW) by 2025. To achieve the goals regarding renewable energy by increasing wind power significantly can be reflected from the strategy. The objective of the wind power industry is to cover 30% of the annual production of the electricity by wind power.[9]

1.1.2. Wind Power Plants

In a wind power plant, the airflow is converted to rotate the axle of the power plant. The axle continues to rotate the generator, which produces electricity. Modern 2 to 5 MW commercial wind power plants have horizontal axle, three blades and the rotor is above the wind in relation to the tower. Such wind power design is the most commonly used because it is the most economically advantageous. It has a large scanning area that can be in maximum over one hectare. The output of the power plant is directly proportional to the scanning area. The surface area of the rotor is relatively small compared to the scanning are, thus a minimal amount of material is required for the use of a large surface area.

[8] See more on the IPCC report 2018. Available at: https://www.ipcc.ch/sr15/.
[9] See more Työ- ja elinkeinoministeriö 4/2017.

In order to induce better production, the size of the wind turbines has grown considerably in recent years. Generally the tip height is between 120 and 150 meters. Highest wind turbines built in Finland in 2017 were 140-150 meters high. The blades are usually manufactured of composite materials using glass fiber and sometimes also carbon or wood together with epoxy or polyester. In Finland, the longest blades are about 70 meters high. A gearbox, generator, transformer and the control system are located in the nacelle. The trunk of the nacelle is usually made of steel and the surrounding shell of glass fiber. Wind power plants are usually white in color, sometimes having red stripe in a blade or the name of the manufacturer or the owner on the nacelle.[10]



An illustrative picture of the size of the wind power plants.[11]

1.1.3. The Landscape Impacts of the Wind Power Plants

Wind power is one of the ways to produce electricity from renewable energy sources. While being a pure energy source, it also has impacts on the environment, people and animals. The most significant changes in the environment are the impacts on the landscape. *Heikkilä* has

[10] See more about the wind turbine technology at: http://www.tuulivoimayhdistys.fi/tietoa-tuulivoimasta/tietoa-tuulivoimasta/tuulivoimatekniikka.
[11]The picture available at: https://www.cleanenergywire.org/factsheets/german-onshore-wind-power-output-business-and-perspectives.

studied Finnish cultural landscape and points out that the landscape bears the worst effects of the wind turbines. According to a study published by the Ministry of Employment and the Economy, the appearance of wind turbines in the landscape affects to the individual's experience of the noise generated by the wind turbines.[12] On the other hand, they are required to change the energy structure and possibly people will get used to their appearance and clean energy as a value directs people to appreciate the outlook of the wind turbines.[13]

The major environmental impacts of wind power plants are the changes of the landscape. The way in which they affect the landscape dependents on the visibility of the wind turbines, the features of the landscape and its tolerance. The size, colouring, amount and the grouping of the wind turbines and the extent of the group and coverage in the field of vision and the height of the location in relation to its environment, all together affect the visibility. When the weather is clear and the lighting conditional are optimal, the tower of the wind turbine appears up to 20-30 kilometres and the blades up to 5-10 kilometres from the actual location. On a sunny day, as the blades rotate, small rays of light may be reflected from the surface of the blades. This is so called flickering effect and it makes the wind turbines more visible.[14]

Landscape effects of the wind farm are caused by the wind power plants themselves, structures related to electricity transmission and road connections. The wind power plants do not necessarily match with the existing landscape elements, because of their large size. Industrial wind turbines can be linked with other large-scale elements, such as factory buildings, pipes and masts, in terms of their visual impacts.

After completing installation of wind turbines, the wind farm area is restored in most parts to its original state. The surface required for wind turbines is relatively small, only a few percent of the total wind farm area. However, the large turbines show up from far away.

Wind power plants do not necessarily cause significant landscape effects, even if the visual change is significant. Although wind power plants would clearly stand out from the landscape, they might not have a significant effect on the structure, nature or quality of the landscape, for example, if there are already large-scale industrial activities present in the area. In such case, the change caused by wind power plants in such landscape type cannot be directly categorized as a harmful effect.[15]

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[12] Työ- ja elinkeinoministeriö 28/2017 s. 60.
[13] *Heikkilä* 2000 p. 128.
[14] Ympäristöministeriö 5/2006 p. 10.
[15] Ympäristöministeriö 1/2016 p. 14.

Typically, a wind power project does not have a significant impact on the landscape structure. The realization of the wind power area generally does not require significant changes on rock and soil and flora et cetera. The wind farm can be located in an area that is not amended by human activity yet. In this sense, the wind power area changes the "logic" of the landscape. On the other hand, the wind farm area is relatively passive during the operation and maintenance of the wind turbines. In this sense, the wind farm does not significantly change the amount of activity by humans after the construction phase.

The effects of wind power on the quality of the landscape are related to the nature of the landscape. When they are placed in an untouched natural area or in a small, traditional rural cultural environment, wind power plants may undermine the integrity of the environment. The quality of the environment changes as the human impacts increase, temporal unity decreases or the highlights of a small built environment are lost as a landmark. The quality of the environment does not change significantly in this type of situation. Open field in a rural environment may be accompanied by scenic values that can be undermined by large-scale wind power construction.[16]

Typically a wind farm does not cause that much change on an area, which is already strongly amended by a human compared to an area that is in its natural condition. In general, a small landscape can in principle tolerate the placement of large structures worse than a large landscape. A landscape is considered to be more tolerant of wind power plants if there are already man-made structures or industrial land use in the area. In order to minimize landscape damage, it is preferable to build wind turbines in conjunction with existing landscape disturbances and locations with modern facilities.[17]

When environmental impact assessment procedure (hereinafter referred as the *"*EIA - procedure*"*) applies to a project, also on broad assessment of visual impacts is carried out. In recent years the EIA –procedure has required that an assessment of visual impacts is carried out 20-35 kilometres from the project area.[18]

[16] Ympäristöministeriö 1/2016 p. 14.
[17] Ibid. p. 17.
[18] Ibid. p. 29.

1.1.4. Authorisation Requirements for Wind Power Plants

The same provisions are applicable to wind power construction as to construction in general. Constructing a wind power plant always requires various permits; without a permit, construction is not legal. The construction of wind power plants is based on zoning under the Land Use and Building Act (468/1994, hereinafter referred as MRL, *fi:*maankäyttö- ja rakennuslaki). There are special regulations regarding wind power plant construction in chapter 10 a of the aforementioned act.

The installation and construction of wind power plants require always a building permit or in some cases an action permit is sufficient. If the wind farm consists of more than 10 wind power plants or its total amount of power is more than over 3 MW, also an EIA -procedure may become applicable as set out in the Act on Environmental Impact Assessment Procedure (252/2017, hereinafter referred as "EIA Act").

In principle, wind turbines do not need an environmental permit as provided in the Environmental Protection Act (86/2000). In case there is a permanent or holiday housing nearby, an environmental permit may be required. The environmental permit is also required if the wind turbine causes harmful effects like those referred to in the Act on Neighbourhood (26/1920). A water permit according the Water Act (587/2011) may also be required, concerning mostly offshore wind turbines. Also an aviation obstacle permit as stipulated in the Aviation Act (1194/2009) and an approving statement from the Finnish Defence force may be envisaged. However, in this thesis I will not review the latter regulations, since the visual impacts are not in the focus of them.

1.2. Research Questions and the Scope

The Government's energy policy sets out goals for a significant increase in wind power, but what it means for the protection of the landscape is my first research question. In chapter 2, I will look at the European Union's and Finland's energy targets for renewable energy, focusing on wind power. I will also consider how landscape impacts and goals for increasing wind power can be aligned together. Considering Finland's surface area, the significant increase in wind power should be achieved without damaging protected or significant landscape areas.

The landscape and its content can be approached from various aspects; natural science, planning, economics, socio-economic science or representatively. [19] This thesis seeks to address how the landscape impacts are legally regulated regarding wind power plants. The second research question is what legal base there is for conservation of landscape and what it includes. Unlike many other countries, Finland does not have an independent conservation act on landscape.[20] The regulations considering landscape are decentralised into different acts and instructions. The focus on this thesis is the legal concept of landscape and how the protection of it has been arranged in the Finnish legal system.

My third aim is to answer the question how protection of landscape is taken into account in the zoning system of the wind power plants. In which phase and how the visual impacts are evaluated and what is the current interpretation based on case law. The focus is more on the determining factors whether an area is suitable for wind power construction or not, not in the actual assessments provided, which can be very detailed and broad.[21]

1.3. Methodology and Sources

The research method of the thesis is basically legal-dogmatic research. In addition, I approach the research question on regulation of the visual impacts of wind power on the practical level by an empirical-toned research method. There is not necessarily used comparative legal methodology in this thesis but I will take an example from the Swedish legislation in chapter 2.5.

The purpose of my research is to clarify the content of legal regulations related to landscape protection from the point of view of the wind turbine zoning process and to systematize regulation regarding it. The clarification includes interpretation, the adoption of normative recommendations *de lege lata* and recommendations for legislative changes *de lege ferenda.*[22]

A practical dogmatic research interprets the legislation in force, which leads to the empirical-toned research method. It takes into account practical decision-making process and the content of the norms regulating it.[23] Various research methods are used in environmental law studies.

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[19] Maa- ja elintarviketalouden tutkimuskeskus p. 12.
[20] *Hollo* 2005 p. 6.
[21] See more about the judgments on the reports *Vesa* 2007 p. 45.
[22] *Kokko* 2016 p. 31.
[23] Ibid. p. 36.

The traditional legal-dogmatic research method alone is not always reasonable in environmental law.[24]

Legal sources are not known to vary in different fields of law, but the emphasis on sources may vary. In the field of environmental law, soft law-type sources that are not mandatory but are actually used by public authorities and courts making them to be a significant source for environmental decision-making. Often these documents have been prepared for general use in the environmental field and not as the basis for actual legal decision-making. Soft law sources include various declarations, recommendations, guides, guidelines, national strategies and action programs, scientific classifications, inventories, surveys and forecasts by the government, ministries and other authorities. The instructions of the Ministry of the Environment are not legally binding, but in practice the authorities and courts apply them in their decision-making.[25] Research in environmental law also makes use of research results produced by natural sciences, as in this thesis I will rely on studies based on wind power itself.[26] It should be pointed out herein that there is not a lot of legal literature regarding renewable energy.

In my thesis, I will as sources of law, besides the applicable law and international treaties, also use the studies commissioned by the Ministry of Employment and the Economy on the effects of wind power on health and impact on birds and bats, a report on the visual impacts of wind power plants, a wind power construction planning guide, an overview of the guidelines and reports on the environmental impact of the wind power plants and a report on the application of environmental legislation on wind power prepared by the Ministry of the Environment, national climate and energy strategy and Finnish Wind Power Association's articles.

I will also present some case law concerning landscape impacts of the wind turbines. The reason why the cases are brought up so widely is that as mentioned previously, there is no specific legislation or rules for regulation the landscape impacts and changes that wind turbines cause. By interpreting relevant court cases and looking into the rules arising out of them, we are able to conclude regularities, which can be led to suggestions to improve the current regulation and legal practice. I pursue to present the cases in certain groups based on the similarities to achieve a coherent approach. The grouping has been carried out only for the sake of clarity and some issues pointed out may be overlapping with other groups.

[24] Ibid. pp. 30-31.
[25] See *Määttä* 2005 pp. 361-363.
[26] *Kokko* 2016 p. 41.

The distance is taken into account, even if it could be argued that it is not purely a landscape question. However, the distance is relevant for how well a wind turbine can be seen and thereby is has a substantial effect on the landscape. Naturally, the distance affects also other matters, as safety and noise, but in my thesis the visual experience plays the main role.

2. INCREASE OF WIND POWER AND LANDSCAPE CONSERVATION

2.1. Principle of Sustainable Development

The principle of sustainable development is universally accepted and globally one of the leading principles in environmental law. The principle is predicted to be the leading principle in the future.[27] The general definition of sustainable development is that the needs of the people shall be fulfilled without taking the same possibility away from the future generations. The subject of the right is actually the future generation.[28] The definition is relatively broad and includes a great amount of different functions in the society. From the point of view of wind power and landscape, the principle can be reviewed from two aspects. On one hand it is a ground for renewable energy and increasing the wind power plants, but on the other hand it sets out an obligation to take into an account the impacts of wind power plants. In order to have an environment that can be protected, the emphasis of the above aspects should be on the first mentioned. The aim of the transmission to renewable energy can be concluded to the principle of sustainable development.

The principle serves the basis for international environmental treaties and legislation. In order to carry out the principle through the land use process the environmental impacts need to be examined and sorted out.[29] According to the government proposal, the protection of biodiversity and the sustainable development of nature fall into under the same concept.[30]

The sustainable development has been implemented in the construction and land use legislation already in 1990 by the amendment made to the previous building act (696/1990). The sustainable development is a central aim of the MRL. It is regarded as an aim, not as an obligation or a requirement. The sustainability in the MRL includes four elements that cover the ecological, economic, social and cultural aspects and they all shall equally be taken into account.

Even though the sustainable development is regarded more as a principle than an obligation in the national legislation and application, the Supreme Administrative Court (hereinafter referred as "KHO", *fi*: korkein hallinto-oikeus) has also used the sustainable development as an

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[27] *Kuusiniemi* et al. I Perusteet > 1.Ympäristöoikeus oikeudenalana > Ympäristöoikeuden periaatteistä > Yleiset ympäristöperiaatteet > Kestävä kehitys. If the principle of the sustainable development will become the leading principle, it will have a great impact on the whole legal system.
[28] *Ekroos 2015* p. 19.
[29] *Jääskeläinen – Syrjänen* 2010 p. 363.
[30] See HE 79/1996vp p. 5 and pp. 18-19.

argument for its decisions. It has stated that the sustainable development consists of a basis for all land use and zoning.[31] For example, in *KHO 1993:A 40*, the court stated that a plan did not promote sustainable development and therefore it was against the requirement of taking the sustainable development into consideration.[32]

2.2. Paris Climate Agreement

At the climate conference (COP21) in Paris in December 2015, 195 countries adopted the universal and legally binding climate agreement. The agreement complements the UN climate change framework agreement signed in 1992. The long-term goal of the Paris Agreement (75/2016) is to keep the increase of the global temperature below 2°C above pre-industrial level and it aims to take measures to limit the increase to 1.5°C in order to reduce the risks and impacts of climate change. The Paris Agreement aims also to reach the global emissions peak as soon as possible and decrease the emissions rapidly afterwards. Besides the aims to reduce the emissions, a long-term goal has been set out to adapt to the climate change and get monetary support the low carbon and sustainable development. The progression shall be reviewed every 5 years to set more ambitious targets as required by science.[33]

From the contractual point of view, the Paris Agreement is the first binding international treaty requiring the states to take steps to mitigate the consequences of the climate change. It does not set out specific measures to be taken, for example in terms of aims for renewable energy and does not even mention it, but it sets out aims to reduce emissions, which can be deemed to require at least a partial transmission to renewable energy sources. The Paris Agreement also means a commitment from each state that is a party to the agreement to be involved in the work against the climate change. Even though the agreement has been criticized to be too weak and not actually obligating the states to concrete actions, it can still be seen as a major step towards global co-operation regarding climate change.

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[31] *Jääskeläinen – Syrjänen* 2010 p. 363.

[32] See also *KHO 2002:199,* whereas the council of the municipality had decided to accept to install a heating piping under the city square. The appellant claimed that the made decision is against the principle of sustainable development set out in the operation plan of the municipality. The claim was overruled by the HAO on the grounds that a decision cannot be held illegal solely leaning on such objective norm. KHO uphold the decision.

[33] Paris Agreement 2015.

2.3. EU Energy Strategy

The EU has undertaken to reduce greenhouse gas emissions by at least 40% by 2030 compared to 1990 level and increase the share for renewable energy at least to 27%. In November 2018, the Commission presented its strategic long-term vision for climate-neutral economy by 2050. The aim is to have 80% of electricity coming from renewable energy sources.[34]

According to Article 194(1) of the Treaty on the Functioning of the EU, promoting renewable sources of energy is one of the goals of the EU's energy policy. The Directive (EU) 2018/2001 on the Promotion of the Use of Energy from Renewable Sources pursue to execute this goal. Increasing renewable energy is needed in order to fulfil the requirements set out in the Paris Agreement and the Union 2030 energy and climate framework, including the goal to cut emissions within the Union as stated in Article 2.[35]

The Member States have undertaken to promote also the security of energy supply, sustainable energy at affordable prices, technological development and innovation. In addition to that, the rural and isolated areas with low population shall be taken as part of the development by providing opportunities for employment and taking care or the regional development.

According to the Article 1, Member States shall collectively ensure that 32% energy comes from renewable energy sources in the Union's gross final consumption of energy in 2030. In order to meet that target, the Member States shall set national targets (Article 2) and to reach those national targets, the Member States shall set a national level for the deployment of renewable energy and apply possible support schemes to maximise the integration of electricity from renewable sources in the electricity market. Finland's national target for share of energy from renewable sources in gross final consumption of energy is 38% by 2020.[36]

As we can see, the more specific targets for renewable energy arises out from the EU directive. Directives set out the framework for national legislation of the Member States. The primary nature of the EU law means that it is prohibited to apply national provisions that are contrary to the EU law.[37]

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[34] European Commission 2018 p. 9.
[35] See Article 3(1) and attachment I part A of the Directive on the Promotion of the Use of Energy from Renewable Sources. Pursuant to the directive the corresponding aims for example for Sweden is 39,8% → 49%, Denmark 17% → 30% and Germany 5,8% → 18%.
[36] Directive (EU) 2018/2001 on the Promotion of the Use of Energy from Renewable Sources. Finland has reached the target in 2014, see more Työ- ja elinkeinoministeriö 4/2017 p. 30. See also Sipilän hallitusohjelma 2015 p. 23.
[37] *Raitio* 2016 p. 223.

In the *Winner Wetten GmbH v. Bürgermeisterin der Stadt Bergheim* case (409/06) it was stated that the directly applicable provision of the Treaty establishing the European Community and provisions given by the institutions shall overrule the national legislation when they enter into force. It should be pointed out herein that the primary nature applies to all EU law, not only to the provisions that have direct effect. [38]

Directives have indirect, effect meaning that the courts of the Member States must interpret national legislation in a way that is consistent with provisions of the EU law. Direct effect means that EU law may be relied upon by a person or legal person of a member state. Directives do not automatically have direct effect but after certain time period they may become directly binding.[39]

2.4. Government's Strategy

The EU Clean Energy Package set an obligation to every Member State to deliver their plan to reach the national targets to the commission. Finland submitted its energy and climate strategy draft in December 2018. The commission will use the plan to follow up the realisation of the targets set out for the year 2030. The Finnish strategy covers all EU's five aims regarding energy, including the decarbonisation of the energy sector and replacing it by renewable energy.[40]

Finland has set out national target to increase the share of renewable energy over 50% and energy self-sufficiency over 55% in the 2020's.[41] The so called soft law nature of the national strategy for climate and energy should be pointed out here.[42] The issue is the weak legal binding of soft law.[43] The strategies are legally binding regarding the institute that has given them, but

[38] Ibid. p. 224.
[39] As stated in the case *Van Duyn v Home Office* which established vertical direct effect of directives. In the case *Grad v Finanzamt Traunstein*, it was ruled that a directive could be directly effective, if it sets out an obligation to achieve a required result. In the case *Pubblico Ministero v. Ratti*, however, it was held that if the time limit given for the implementation of the directive has not expired, the directive cannot have direct effect.
[40] Työ- ja elinkeinoministeriö 20.12.2018. Available at: https://valtioneuvosto.fi/artikkeli/-/asset_publisher/1410877/integroitu-energia-ja-ilmastosuunnitelmaluonnos-toimitettu-komissiolle.
[41] Työ- ja elinkeinominsteriö 4/2017 p. 31. See also Sipilän hallitusohjelma 2015 p. 23.
[42] See for example *Talus – Penttinen* 2015 pp. 1149-1150.
[43] See more *Johnston* 2015 pp. 43-45.

the practical meaning is still broader.[44] However, the climate and energy strategy is guiding Finland's energy policy.[45]

In 2013 wind power produced about 0.8 TWh electricity which covered approximately 0.9% of the total electricity consumption in Finland. Finland's goal is to increase the wind power production to 9 TWh by 2025. According to the Low Carbon Finland –scenario the production could be 7-29 TWh per year by 2050 – at its peak triple the amount compared to 2025. At the moment the local master plan (*fi*: yleiskaava) in relation to wind power is very active across the country, though the significant increase of wind power still requires developing the permitting process. The focus will be on larger wind farms.[46]

There are wind farm projects in planning for over 11 300 MW. At the moment the total amount of annual production is 1 500 MW. In investments it means 17 billion EUR. The planned capacity would cover 40% of the total consumption of electricity in Finland that equals to the amount of capacity installed already in Denmark. There are currently over 4 000 MW projects ready to be built with all necessary permits. [47]

The wind power plays a major role in the 100% renewables –scenario. The reason for the investments in wind power has been the rapid development of the wind power technology and the decrease in the price. Globally the wind power has been forecasted in to increase from the level of 400 GW in 2015 to over 1800GW in 2030. Between 2018-2018 in total 2 TWh will be put out to tender. Already permitted projects correspond to annual production of 6 TWh. [48]

As the Act on Production Subsidy for Electricity Produced from Renewable Energy Sources entered into force on 25 June 2018, in the end of the year 2018, 1.4 TWh was tendered out. The project developers determine the subsidy level (€/MWh), that they are prepared to produce a certain amount of capacity (MW) or production (MWh). The lowest bids that can fulfil the available capacity or production target shall then win the tendering process. The auction is technology neutral, even though it does not include hydro power. Electricity producers submitted binding tenders concerning the premium, the amount of electricity to be produced,

[44] See *Talus* 2015 p. 17.
[45] See Sipilän hallitusohjelma 2015 p. 23.
[46] Työ- ja elinkeinoministeriö 31/2014 p. 34.
[47] Uusiteknologia 2017. Available at: https://www.uusiteknologia.fi/2017/04/25/tuulivoima-ala-valmistautuu-kisaan-listalla-17-miljardin-investoinnit/.
[48] In Finland the feed in tariff system has promoted the development of the technology and encouraged to project development. See more about the effects of the feed in tariff system: Työ- ja elinkeinoministeriö 4/2017.

the power plant project and other necessary information. The lowest bids that can fulfil the available capacity or production target shall then win in the tendering process.

The Energy Authorities received 26 bids in the tendering and all of them were wind power. The total amount of yearly production is slightly over 4 TWh.[49] This demonstrates that wind power is already the cheapest way of the renewables to produce electricity in Finland and the future of wind power looks promising in Finland.

2.5. Effect on the Landscape Conservation

The increase of wind turbines affect the environment, and has especially it has a direct effect on the landscape especially. This could mean stricter regulation around the landscape impacts, but in order to construct the wind turbines in accordance with the EU objectives and national strategies, there has to be an actual possibility to construct the required amount of wind turbines. As we can see from the Paris Agreement and the EU directive, Finland is obligated to amend the energy system of the country.

Besides the energy objectives, Finland has undertaken to protect its environment and landscape as well, as later will be presented. The protection of the landscape and increasing the amount of wind power conflict together. This a typical character of environmental law and requires a total consideration of both aspects.

In the Swedish Environmental Act (*sv*: Miljöbalken 1998/808), there is a special section covering situations that require balancing the different competing interests. Section 10 of chapter 3 concerns balancing between incompatible national interests. According to section 10 of chapter 3 of the Swedish Environmental Act, if an area that in terms of national interest would be suitable for several incompatible purposes, the preference shall be given for the land use that promote the long-term management of the land, water and physical environment in general. The choice between competing interests should be made by taking into consideration the best long term use of the land in question.

[49] See the newsletter of Energiavirasto, available at: https://www.energiavirasto.fi/-/uusiutuvan-energian-tukikilpailutukseen-26-tarjousta?redirect=https%3A%2F%2Fwww.energiavirasto.fi%2Fuutisarkisto%3Fp_p_id%3D101_INSTANCE_c1lTKRwQcXY6%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2.

The idea of preferring such land use that in reality supports and promotes the best ways to use and utilize land in long-term goes hand in hand with the aims of increasing renewable energy. If promoting renewable energy would be taken as leading principle in steering land use, it would actually have effect in the decision-making, where the different choices and options are weighted.

In the decision-making when there are landscape conservation and energy objectives as competing interests, the rule in the Swedish act could be led to compare that which one would be better for the whole environment, not just for the specific land area and use of it. If the principle of sustainable development would become the leading principle in the entire legal system[50], the decision could be based on the fact what is the best for the environment in general taking into consideration the future generation and what is the best solution to use land and environment regarding climate change.

[50] *Kuusiniemi* et al. I Perusteet > 1.Ympäristöoikeus oikeudenalana > Ympäristöoikeuden periaatteistä > Yleiset ympäristöperiaatteet > Kestävä kehitys.

3. LANDSCAPE AS PART OF THE LEGAL SYSTEM

A landscape is sensitive in the sense that it includes wide-ranging and differently appreciated matters. At the same time, the visual values relate to the psychical and economic needs of a human. Landscape is an essential part of the cultural identity, history, research and education. Although landscape as an experiential entity is often associated mainly with visual aspects, it is meaningful as a stage of historical events and as an attractive factor of the natural environment.

History and culture of nations can be reached by the experience of the landscape. It is said that people who do not take care of their landscapes, can lose connection to their identity and background. Landscapes provide inspiration for art and science, in that respect, the landscape has also a cultural-aesthetic value, which also the legal system seeks to protect. Thus, the protection of a landscape can be based on historical or cultural values without taking into account the visible part or the beauty of it.[51]

3.1. Beauty and Aesthetic as Environmental Value

In the literature there seems to be no precise definition of the environment, but in general the environment can be defined as an entirety consisted of the nature and its features including the human activities that have and will shape the environment. [52] Environment can be defined as the surrounding nature of a human and built environment. On the other hand, from the human point of view, the natural environment and cultural environment can be distinguished from each other. The cultural environment can also be named as ”human environment” or ”built environment” or ”activity environment”. However, regarding decision-making, environment as a definition is ambiguous.[53]

According to *Aarnio's* definition, a value is a feature of some matter, in other words an object; a feature to valuable. Valuation is a subject's belief that an object has value. [54] In the context of the legal system, only humans can give value to nature, but the value of the nature can be based also on the intrinsic value of it.[55] *Kumpula* argues that the respect of the intrinsic value of the

[51] *Hollo* 2004 pp. 419-420.
[52] *Hollo* 2009 pp. 10-11.
[53] *Jääskeläinen – Syrjänen* 2010 p. 40.
[54] *Aarnio* 1982 p. 178.
[55] *Hollo* 1994, pp. 13-14.

nature is the basis of determining the rights of the environment. [56] *Pihlström* points out that in spite of the recognised intrinsic value of the environment, the environment does not have the said value without a human being giving the value. Thus, the value of the environment depends on human.[57]

The intrinsic value of nature is recognized in law and it is also stated in the Convention on Biological Diversity (78/1994), which begins with a statement that "the contracting parties are conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components" and the contracting parties undertake to protect the listed values.[58]

Because of the nature of the legal system, only human can give a value for nature. The recognized intrinsic value of the nature means, that the nature is valuable itself. Problematic is what weight it should be given, as the legal system protects other values as well. The nature does not have a particularly own rights or a representative.[59]

Thus, the nature has a value given in the legal system and the landscape is part of the nature, hence it can be said that due to the intrinsic value of the nature, also landscape has a value, which has been recognised in international treaties and in the Constitution of Finland (731/1999). However, on the basis of that, the legal system does not guarantee protection to nature and landscape in their entirety.

Alone the fact that the nature is valuable, as the nature has an intrinsic value, does not make a wind farm area unsuitable to fit in the environment. As all nature is considered to be valuable and this being a criterion, it would mean that the wind turbines would not be allowed be built anywhere. It seems that only the landscape areas determined to be protected, valuable areas, are taken into consideration in the decision making. Although the international treaties and the Finnish Constitution acknowledge the intrinsic value of the nature, it is not a ground to keep the nature untouched and as the provisions of the MRL provide, the aim is to build and use the land in liaison with the nature without harming it, not meaning that the environment cannot be amended or shaped by human activities.

> *KHO 2017:2800.* From one point, the wind turbines would be visible in a distance of 5 kilometres. KHO stated that the landscape impacts are assessed sufficiently based on

[56] *Kumpula* 2004 p. 47.
[57] *Pihlström* 2000 p. 27.
[58] Convention on Biological Diversity 1992.
[59] *Kuusiniemi* 2000 pp. 193-194.

the fact that the area itself is not culture historical valuable area and it does not include valuable historical built landscapes.

Pohjois-Suomen HaO 27.12.2017 17/0319/1. The appeal was grounded on the wilderness features of the nature and considered the nature values regarding the animal species. The appellant claimed that the wind farm should be located on less valuable areas. The court stated that the sub-part local master plan fulfils the requirements of adaptation and consistence with the environment as set out in sections 39 and 77b of the MRL.

Turun HaO 6.7.2016 16/0158/1. The appellants challenged the decision of the local construction authorities based on the ground that the wind turbines do not adapt to the environment nor meet the requirements of beauty and proportionality. The administrative court referred to the decision *KHO 2013/184* stating that the visibility to surrounding properties or that the impacts of the wind turbines possibly affect the value of the property, is not considered to be unreasonable harm as determined in the MRL.

Hämeenlinnan HaO 2.32016 16/0108/2. The wind turbines are located at lake areas and the court pointed out that the projects cannot be carried out without changes in the landscape.

The concept of the beauty is often associated with protection of landscape and it forms one of the grounds for landscape protection in the Finnish environmental legislation. The beauty is determining factor, inter alia, in Act on Soil Material (555/1981), MRL and Nature Conservation Act (1096/1996, hereinafter referred as "LSL", *fi: Luonnonsuojelulaki*). For example in accordance with section 32 of chapter 5 of the LSL, establishing a landscape conservation area is possible in order to preserve and manage a natural or cultural landscape of outstanding beauty. According to the government proposal[60] on the LSL, the protection of the beauty of the nature and enhancement of the landscape values is one of the aims of the act.

It is not defined by law, what shall be considered to be a "beautiful" natural or cultural landscape. Beauty and law have been intertwined in the environmental law that contains many regulations defined by the word beautiful. The word "adaptation" (*fi: sopeutuminen*) is used in the legislation of the construction authorisation system. Adaptation does not mean from its wording for example that a landscape would remain beautiful by adapting a building, but at least it

[60] HE 79/1996 vp p. 18.

excludes the opposite of it. In my view, the adaptation to the landscape has not been completed successfully if the result is ugly.

Beauty is a value produced by the culture and it reflects feelings of the people seeing a pleasurable landscape or a building. What is beautiful in the eye of the prospector, varies between times and cultures.[61] The feeling about beauty, evoked by a landscape or a building is subjective, but exclusively a subjective approach would not be practical regarding a legal decision. How should beauty be determined in order to have a usable term in a legal interpretation case? In ancient times and in the philosophy of medieval time, it was seen that beauty can be valued objectively. In the 18th century a transition period began from objective beauty to subjectively perceived beauty.[62]

Courts are obligated to resolve issues related to beauty. Because of the duty to adjudicate and the reasoning, it would be impossible to examine beauty totally subjectively. Objectivity itself is also linked to the surrounding culture. Nowadays, it is thought that beauty is somewhere between the yardstick of the objectivity and subjectivity. It is impossible to say absolutely what is beautiful and not.[63] Beauty is evaluated by a court during an appeal. Decision-making regarding environment is administrative procedure and authorities are usually the first ones making a decision. A person dissatisfied with a decision can bring appeal against an administrative court and that is the first time when the question about beauty comes into consideration of the court. The court does not decide what is beautiful but evaluates whether beauty been taken into account in the way required by law. The process may be compared to art; the operator is like an artist and the decision-maker as art critic judges whether the artist, alias authority, made the decision in accordance with valid law.[64]

Nowadays, nature is in principle considered to be beautiful, i.e. all original, unmodified natural landscape is beautiful. The nature itself has an intrinsic value that is recognised in international treaties as mentioned previously and the beauty of nature is linked with this. The intrinsic value of the nature comprises an aim to protect the functions of nature and conservation of the biodiversity. In environmental law, beauty of nature is not given the same kind of protection as beauty of the culture. If nature would be defined as beautiful by law and be protected for that reason, the actions of people would become very restricted.[65] On the other hand, building and

[61] *Ekroos* 1995 p. 45.
[62] Ibid. p. 13.
[63] Ibid. p. 47
[64] See *Ekroos* 1995 pp. 20-22 and 389-391.
[65] Ibid. pp. 16-19 and 23-24.

altering environment is exceedingly controlled with one of the protection objects being beauty.[66]

Landscape conservation is one of the new fields of environmental law that makes the regulation still incoherent. Landscape is often associated with other subjective sensations like hearing and smell but they do not usually have legal meaning, although some exceptions may occur. Which factors are significant or not, is a valuation issue.[67]

Following the case law, it can be stated that archipelago landscape is considered to be a special feature and is valued higher even though it is not an especially protected area according to the law.

> *Ahvenanmaan HaO 27.7.2016 82/2016.* The court returned the case back to the construction council because altough there already was some building at the planned wind turbine location, the wind turbine would be dominating in the landscape from long a distance perpective due to its large size and the sensitive archipelago landscape. The nearest house was located some 700 metres from the planned wind farm area. According to the ruling, the landscape impacts and the relation to the surrounding environment should be assessed more widely than in a normal building permit procedure.

The transition from landscape value to its intrinsic value and eventually protection is an environmental and culture political a matter of choice. There has been a growing emphasis on landscaping on some sectors such as building protection, whereas they are not so decisive to road construction. Sometimes it may be necessary to intervene in natural development when for example open agricultural landscape is threatened by overgrowing. In such situations, landscape maintenance is active in order to conduct ominous impacts what is carried out as an after-care of different projects like mining.[68]

3.2. Landscape as a Legal Term

What is a landscape? The landscape could be defined to be a view or a look out, which opens from the foothold of the spectator. The landscape has always its history and it has taken shape over time due to natural phenomenon and human activities. Every person experiences the

[66] Ibid p. 29.
[67] *Hollo* 2009 p. 357.
[68] *Hollo* 2009 p. 358-359.

landscape depending on his or her previous knowledge, experience and values.[69] Under the European Landscape Convention (14/2006), landscape is defined as follows: ”landscape means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors”.

The landscape types can be divided into natural landscapes and cultural landscapes. All human activity is excluded from the natural landscape. It is acknowledged today that such landscape is difficult to find, therefore it can be deemed that small amendments made by a human shall not affect the definition of the natural landscape. For example a national park with duckboard and info center is still considered as cultural landscape.

As stated previously, the landscape consists of both natural and man-made environments. However, there are areas that do not fall in any of the aforementioned categories. For this reason, the legislation determines the landscape broadly leaving a “grey zone” between the two categories so that a landscape may fall under the scope of either definition based on the values of the person examining the question. On the other hand, a detailed breakdown of legal provisions has not been seen necessary, as the value-toned law interpretations becomes more important than the formal content of the landscape concept.[70]

Cultural landscape can be classified as rural and urban landscapes. The cultural landscapes of the countryside are typically agricultural landscapes, but also all other rural landscapes, which include lookouts of the countryside. Agricultural landscapes are the backbone of the rural landscapes at the countryside since cultivation has been a central part of the Finnish culture. It is worth noting, that only 8% of land is used for farming in Finland, whereas in Central Europe many countries have the same amount of forest and the rest of land being used for farming. It can be said, therefore, that agricultural land is rare and also unique due to weather conditions.[71] Traditional landscapes, also traditional biotopes, are meadows and pastures formed by traditional land use.[72]

The distinction between valuable and ordinary landscapes is difficult in respect of the fact that mere objective beauty is not usually enough to determine whether the landscape needs maintenance or protection measures. The beauty of the landscape is a legal term and its content shall be assessed separately in each relevant case.

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[69] *Heikkilä* 2001 p. 11.
[70] *Hollo* 2001 p. 419.
[71] *Heikkilä* 2001 pp. 15-16.
[72] Ibid. p. 21.

The consideration of landscape aspects is especially necessary in the implementation of structural measures, as well as generally in land use planning. Landscape changes are defined as one type of environmental impacts that should be recognised. As for the landscape, as also in other environments, the control means can be distinguished to protection and directive means. The protection of the original nature and establishment of protection areas promote landscape values, although the beauty of the landscape is not enough to create a nature reserve. Respectively, the protection of buildings and antiquities serves also landscaping purposes; even though it is not the main objective. In the absence of landscape legislation, it is natural that the value related aims are assessed within the process where the possibilities of damages are assessed as well.[73]

3.3. Regulation regarding Landscape

3.3.1. Landscape in International Treaties

United Nations Educational, Scientific and Cultural Organisation ("UNESCO") Convention for the Protection of the World Cultural and Natural Heritage of 16 November 1972 sets a global obligation to preserve significant places for future generations. The provisions of the treaty are divided into cultural and nature places, but the border is not always clear. According to the Convention, inter alia, areas including archaeological sites which are outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view shall be considered as cultural heritage and natural features that consist physical and biological formations or groups of such formations and which are outstanding universal value from the aesthetic or scientific point of view, shall be considered as natural heritage. Also natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty are defined as natural heritage and thereby under the protection of the Convention. The places are required to have exceptional conservation value and they need to be particularly valuable aesthetically or scenically. The landscape factors are relevant in practice. The objects that have been taken into the UNESCO list have a stronger position in terms of protection than areas not listed. [74]

[73] *Hollo* 2009 p.
[74] See more *Ekroos* 1995 pp. 68-70.

At European level, European Landscape Convention, also known as Florence Convention, was signed on 20 October 2000 to enhance protection of landscape values and ensure that values shall be taken into account in legislation and decision-making processes. The aim of the Convention is to promote landscape protection, management and planning, and to organise European co-operation on landscape issues. The parties to the Convention undertake to recognise landscapes in law as an essential component of people's surroundings and part of their shared cultural and natural heritage, as well as a foundation of their identity. As mentioned previously and as can be seen from the Convention, the landscape is acknowledged to be linked with the identity having also a historical value.

Landscape values should also be included in the regional and town planning policies. Statements and instructions of the EU have been mostly indicative and there is not really any regulation. In the EU landscaping is mainly carried out by measures of the nature conservation and the regional policies. [75]

3.3.2. Constitutional Protection for Landscape

According to subsection 1 of section 20 of the Finnish Constitution, nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The speciality of the section is, that the future generations are subjects, inter alia, they have the right that everyone shall take over responsibility for it. In other words, the responsibility towards the environment is seen as an obligation towards the future generations. The liability is addressed to living nature and non-living nature environment and cultural environment, including buildings and landscapes. Pursuant to the government proposal for the Finnish Constitution[76], a landscape is defined as shaped by human activities and part of the cultural environment as buildings. The definition does not actually include untouched natural landscape.

The second subsection provides that the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to affect the decisions that concern their own living environment. The public authorities includes besides the legislator, the authorities that realise nature conservation like administrative authorities and courts. The healthy environment is the responsibility of the public authorities that includes certain level of pleasant living environment. The pleasant living environment is not determined

[75] Such as the European Landscape Convention 2006.
[76] HE 79/1996 vp p. 18.

more closely but in accordance with the meaning of the standard language, it shall include also the aesthetic aspect, so in this case the definition is deemed to include a landscape.

The first subsection stating everyone's responsibility of the environment indicates the idea of the rights of the future generations and the intrinsic value of the nature. The second subsection indicates the right of people to enjoy of healthy environment that includes at least in a broader sense some kind of requirement of comfortable environment. [77]

Section 20 can cause conflicts with section 15, the right to property. It has been seen that after the amendment of the fundamental rights, property owners are deemed to tolerate more restrictions regarding their property and land use. It means more emphasis on the health requirement in the planning decision-making process. [78] Concerning wind power plants, the right of the future generations could be seen also as an obligation for the land owner to withstand more when it comes to the mitigation measures against climate change, for example the impacts of the wind power such as landscape impacts.

3.3.3. Active and Passive Landscape Protection

One of the aims of the planning is to protect landscape values. Impacts on the landscape are regulated in every plan. Pursuant to section 28 of the MRL, the decisions concerning landscape conservation areas in accordance with section 32 of the LSL shall be taken into account in drawing up the regional plans and special attention shall be paid to the protection of landscape, natural values and cultural heritage. The landscape shall be notified also at drafting the local master plan. There are no special requirements set in the content of the local detailed plan regarding the landscape but section 54 refers to the regional plan and the legally binding local master plan. The local detailed plan shall be based on the regional plan and the legally binding local master plan.[79] Thus, the landscape values are at present when the local detailed plan is drafted and the values are taken into consideration.

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[77] PeVM 25/1994 p. 10.
[78] *Jääskeläinen – Syrjänen* 2010 p. 55.

[79] Also, according to section 57 of the MRL, necessary orders may be issued in the local detailed plan if an area or building requires protection due to its landscape. However, the protection regulations must be reasonably for the property owners. In addition, landscape values shall be taken also otherwise into consideration than what is provided concerning local master plans and local detailed plans. The provision imposes an obligation to take into account landscape values and adaptation to the environment. Construction on the coast and other land use should adapt to the coastal landscape. According to section 53 of the MRL, the local authority may impose a building prohibition in an area where a local detailed plan is revised or drafted. In such case, the activities changing the landscape are subject to permit as regulated in section 128 of the MRL.

Landscape protection can be divided into positive, so called active conservation and passive conservation. The aim of the active conservation is to address especially valuable and perceived areas. The passive protection regulates projects, which may have impacts on a landscape.[80]

The reservations for landscape areas such as the decision on the nationally valuable landscape areas and landscape areas in accordance with the LSL and the zoning system in general can be seen as active protection. The provisions set out to take the landscape aspect into consideration are passive protection. The permits and regulation concerning projects that are changing the landscape can be seen as passive landscape protection.

3.3.4. Landscape areas

According to the scope of the LSL, the act shall apply to nature and landscape conservation and management. The aim of the LSL is, inter alia, to conserve the beauty and scenic values of nature. Pursuant to section 32 of the LSL, a landscape conservation area can be established in order to preserve and manage a natural or cultural landscape because of their outstanding beauty, historical interest or other special value. The Ministry of the Environment decides on the establishment of such protection area. In the government proposal landscape conservation areas and nature reserves are distinguished by the protection objective. Regarding landscape conservation areas, the nature shaped by human is also protected and in relation to nature reserves, the original nature is protected. According to the detailed rationale of the government proposal the landscape areas differs from the nature reserves regarding that the purpose of the protection regarding the landscape areas is not to protect the original nature, but the nature that human has shaped by farming, buildings and roads. Often the nature and old housings constitute together a beautiful landscape area.[81] The aim to establish a landscape area is to protect the combination of the natural and hand-made landscape.

As mentioned previously, the Ministry of the Environment makes the decision to establish a nationally valuable landscape area. Regarding other landscapes, the Centre for Economic Development, Transport and the Environment (hereinafter referred as "ELY -centre", *fi*: Elinkeino-, liikenne ja ympäristökeskus) makes the decisions on the establishment. Provisions on the content of the decision are set out in section 15 of the LSL. The decision shall include a

[80] *Kuusiniemi* et al. VI Luonnonsuojelu-, maiseman- ja kulttuurinsuojelu > 4.Maisemansuojelu >Yleistä.
[81] HE 79/1996 vp p. 18.

review of the landscape area and the aims of the protection and maintenance. In addition, it shall have special orders as defined in the LSL considering either the area as a whole or only a part of it.

The decision regarding the landscape area can include orders that aim to preserve the essential features of the landscape. The essential features can for example be the features regarding the original nature such as forests, rivers, old trees and the features regarding the cultural landscape such as building and cultivation areas. The orders can concern measures with the purpose to make changes to these features, for example cutting down trees or amending the façade of a building. The orders can concern only the essential features.

The orders cannot set out any active measures to be taken, as stated out in the report of the Environment Committee [82]; the orders concerning landscape areas are prohibitions and restrictions and cannot include requirements to take actions. In specific cases an exemption can be granted regarding landscape area order. The exemption can be applied at the ELY –centre regardless of whether the exemption concerns a national landscape area or other landscape area. There are no preconditions when the exemption may be granted; it leaves discretion to the authorities. The starting point is that the exemption cannot jeopardise preserving the essential features but the permit can be granted even if the essential features are in danger to be preserved.[83]

The Finnish Government has given a decision, in principle, on the landscape conservation areas and development of the landscape maintenance. According to the decision, 156 areas have been classified as nationally valuable landscapes with total volume of 730 000 hectares and of that 300 000 hectares is arable land. Over the centuries, the basis of Finnish cultural landscape has been farmlands grown by the farmers. The total amount also includes areas that cannot be referred to farmland, such as Suomenlinna.

Decisions establishing the area can include necessary provisions for preserving the characteristic features of landscape. Pursuant to section 34 of the LSL, the provisions cannot cause a significant inconvenience to the property owner, which leads to the issue of the conflict between landscape protection and the rights of the property owner. The landscape area orders shall not cause significant harm to the property owner. Such order may result in overruling the decision.[84]

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[82] YmVM 8/1996 vp. p. 12.
[83] See *Similä - Suvantola* 2011 pp. 127-129.
[84] *Similä - Suvantola* 2011 p. 128.

The landscape areas can be discontinued or the landscape area orders can be softened if the landscape value of the area has significantly decreased or if the protection hinders an important project regarding public interest. Protection of a landscape area can be discontinued more easily than protection of a nature reserve.[85]

The Natura 2000 network does not concern actually landscaping but it can have an effect on the construction projects. According to section 65 of the LSL, if a project is likely to have significant adverse effect on the ecological value of a site included in the Natura 200 network, the planner is required to conduct an appropriate assessment of its impacts.

The same principles apply to landscape areas as to nature reserve programs. According to the LSL, the established landscape areas are instructing the drafting of the regional plan (*fi*: maakuntakaava). In addition to the landscape areas, there are other valuable areas to be taken care of when the regional plan is drawn up. Besides the national valuable areas, the regionally and locally valuable areas should be addressed in the regional plan.[86]

The valuable areas and object shall be addressed in the regional plan in order to steer the building processes and other land use in a way and the cultural values of the areas can be protected. The landscapes are either natural landscapes or cultural landscapes. The cultural landscapes can be divided into two main groups such as agricultural landscapes and cultural landscaped of the urban areas. Because of the scale and the tasks of the regional plan, the area reservations for cultural and traditional landscapes are made in the regional plan. The regional plan is the first plan steering the other plans, so it is natural that the possible area reservations for landscape areas are made already there. The Ministry of the Environment decides on the valuable landscape areas and the ELY-centre on the other landscape areas. Currently the decision-making of the area reservations is made on national or regional level. If the area reservations would be determined in the local detailed plan (*fi:* asemakaava) the municipality would make the decisions. Taking into consideration the landscape values in the regional plan means also that the functions causing adverse effect on the landscape can be directed to secondary areas. The aim of the maintenance of the landscape is to take care of the special characters of the region and increase the comfortability of the environment. Regards to valuable landscape area, it means often that the original use of the area continues, but regarding the

[85] Ibid. p. 130.
[86] *Jääskeläinen – Syrjänen* 2010 p. 231.

changes, restrictions are applied or the planned use is prohibited. The land and area use must be in conformity with the important landscape values.[87]

3.3.5. Landscape and Indigenous People

The right of Sami people, as an indigenous people, to maintain and develop their own language and culture is recognised in subsection 3 of section 17 of the Finnish Constitution. For Sami people the nature has a significant role in their culture. As mentioned previously, a natural landscape and cultural landscape are separate concepts. Finnish people consider farmland as cultural landscape and actually the whole concept of culture has referred to farming. Natural landscape means untouched nature.

Sami people do not set the cultural and natural landscape against each other. The natural landscape itself includes the elements that make the landscape cultural for Sami people.[88] The cultural Sami landscape consists of the landscape shaped by the nature, Sami activities, the cultural meanings of the landscape, own and collective stories, memories and experiences of the landscape. A typical Sami landscape appears as a natural landscape without any imprints.[89]

According to the national land use objectives, the aim is to preserve and maintain valuable cultural environmental values and heritage of nature values. Sami cultural values and significant areas to Sami culture are especially mentioned in the national land use objectives.[90] Also the possibility to live off of their traditional livelihood such as fishing and reindeer husbandry should be taken into consideration. However, it should be pointed out that one wind turbine does not use lot of land, so it is not actually hindering reindeer from grazing or living along with wind farms even of larger size.

The right to maintain and develop own culture entitles Sami people to make their living traditionally from reindeer herding. The rights of Sami people to practice their culture shall be taken into account in the land use. This should be considered in the reindeer herding area.[91] According to the Act on Wilderness Areas (62/1991), wilderness areas are established for example to protect and preserve Sami culture and their traditional livelihood. The wilderness areas are not suitable for wind power construction.[92]

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[87] *Jääskeläinen – Syrjänen* 2010 pp. 237-238.
[88] Lapin ympäristökeskus 2007 p. 23.
[89] Ibid. p. 37.
[90] See Valtioneuvoston päätös valtakunnallisista alueidenkäyttötavoitteista 14.12.2017 pp. 7-8.
[91] Ympäristöministeriö 2012 p. 17.
[92] Ibid. p. 48.

These aspects should be taken into account when there are wind farms under planning in the up north. The landscape that might not seem that special for other people, the landscape can be very important for Sami people. As fells are specially pointed out to be good construction site for wind farms in the guideline of the Ministry of Environment[93], the rights of Sami people regarding their special cultural places and landscapes should be taken into consideration when the planning is taking place. As it is stated, the special cultural places for Sami people do not necessarily constitute of elements made by human activities, rather of untouched nature that has special meaning for Sami people. This should be noted when the assessment of the visual impacts of the wind turbines is carried out in the north Finland.

[93] *Jääskeläinen – Syrjänen* 2010 p. 205.

4. REGULATION OF LANDSCAPE IMPACTS CONCERNING WIND POWER

4.1. Land Use and Building Planning Ideology

The planning ideologies are long-term operational objectives that are based on specialists' knowledge and they represent relatively permanent approach of the zoning values. The ideologies create the very essential ground for the zoning and planning culture that have effect on the legal consideration process. The planning ideologies have their footprint on the conflicts arising out from environmental law. The assessment and valuation made by the decision-makers is always bound by time and place. The historical aspect creates a link to the previous built environment making it more connected to the past, but otherwise the assessment is made in accordance with the ideas of the certain period of time. There is no permanent, forever lasting plan or image how for example a city should be built or what kind of changes can be made in a landscape. Thus, the decision-making regarding planning and building is always linked to the current time.

The previous planning ideologies, functionalism and rationalism did not appreciate the old, built environment. Also the valuation of nature has become more rooted in the land use and building system since the principle of sustainable development. Today's planning ideology is based on the idea of preserving built environment and in a way to enable to retain the historical values. The new planning ideologies, such as incrementalism, emphasize the importance of making small changes instead of extensive and large changes, and integrative planning ideology together with the principle of sustainable development highlight the deficiency of the decision-makers. According to these theories the new zoning should always be based on the built environment and nature. The sustainable development can be seen as taking a more active role as a planning ideology in the future.[94]

The same applies to the cultural landscape, as it is built environment in the sense that it is constituted of buildings and activities made by human, agriculture and other land use. The planning ideologies are applicable to the landscape assessment as well. However, as previously stated the current planning ideologies are in accordance with the principle of sustainable development, it can be deemed that the planning should encourage to climate-friendly zoning decisions. In order to mitigate climate change with the assistance of renewable energy, herein

[94] *Jääskeläinen – Syrjänen* 2010 p. 32.

meaning wind power, the mitigation of climate change should be a part of the planning ideology structure and affect to the objectives and values that should be pursued by the land use and building legislation.

If a building loses its traditional rectangle shape and for example turns into a wavy shape such as the library Oodi[95], this kind of change can be seen as testing the boundaries of the legal consideration. Either the discretion of the decision-makers shall have flexibility or the legislation should be amended.[96]

It goes without saying, that a wind turbine is not a natural element in a natural landscape or in a traditional agricultural landscape. However, as mentioned in the introduction chapter, there were over 10 000 traditional windmills at the end of the 19th century. It could be said that, the traditional windmills were part of the traditional agricultural landscape as they were used for grinding the grain. Could the current industrial size wind turbines gain same kind of status considered as a measure to fight against the climate change that is a hot topic of today? Wind turbines can be seen as having a major role in facing the climate change, as we also can see from the Finnish Government's strategies and in which direction the use of renewable energy sources is already heading; wind power being the most efficient and low-costing form of renewables in Finland. In the future wind power will constitute a bigger share of the energy production.[97] As we are in a transition to renewable energy and wind power is already now the most efficient way to produce electricity, wind turbines could be deemed to be part of the landscape. Although, this is still affected by the NIMBY –phenomenon, "not in my back yard". The term is used to describe the phenomenon where people accept wind turbines in general, but they do not want them to be located in their neighbourhood.[98] Also the fact the wind turbines will be built in larger scale without any state subsidies in the future makes wind power more acceptable in general.[99] Also the climate change is all the time more present in the education system, so the general opinion is most likely going to change. As the climate change requires instant mitigation and adaptation measures to be taken, also people need time to adapt to the

[95] A new library built near the railway station in Helsinki.
[96] See *Similä - Suvantola* 2011 pp. 32-33.
[97] Työ- ja elinkeinoministeriö 4/2017 pp. 45 and 88. Referring to the page 105 of the report, globally wind power is predicted to increase up to 1800 gigawatts by 2030.
[98] See more about the NIMBY –phenomenon in Ilkka. Available at: https://www.ilkka.fi/mielipide/kolumnit/energiantuottamisen-nimby-ilmio-1.662179.
[99] See the projects that will be developed without any state subsidy here: https://www.tuulivoimayhdistys.fi/hankelista.

new way of thinking. Thus, wind power plants will become larger part of today's landscape model.

4.2. Environment and Land Use Planning

The environmental legislation reflects the general values. The central values of environmental law are the biodiversity and the regenerative capacity of the nature and the cultural values of the nature.[100] As the societal values change, it will reflect the planning ideologies. In the previous Finnish building act, new values were added separately which cause that they could not be integrated clearly in the objectives of the planning system. Because of the industrialisation and urbanisation, the importance of local master planning was realised. Previously the detailed plans were drawn up from small spices, as so called post stamp planning and their suitability to the wider picture was not examined. The present zoning system begun at the end of the 1980[s], when the local master planning became more general.[101]

The planning forms have derived from the need to eliminate certain problems and to have a better grip on amending the future planning. To have an impact on the future actions, the planning has an active role in the development.[102]

Planning the use of the environment means all preliminary actions, which aim to plan and develop the land use and which other more detailed land use plans are based on.[103] The planning system includes the general area use planning system and more specific land use as referred in the LSL. The national land use objectives, a regional plan, a local master plan and local detailed plan are determined in the MRL. The general purpose of the MRL is to ensure that the use of land and water areas and building activities create preconditions for favourable living environment and promote ecologically, economically, socially and culturally sustainable development.

According to the Land Use and Building Decree (895/1999, hereinafter referred as "MRA", *fi*: "maankäyttö ja rakennusasetus") the impacts of a plan are targeted at five environmental factors that are: 1) the living environment of human, 2) soil and rock, air and water, 3) plant and animal

[100] *Hollo* 2009 pp. 9-10.
[101] *Jääskeläinen – Syrjänen* 20140 p. 30.
[102] Ibid. p. 37.
[103] *Kuusiniemi* et al. III Ympäristönkäytön suunnittelu >Suunnitelunormit eri laeissa.

species, biodiversity and natural resources, 4) area and community structure and transport and 5) townscape, landscape, cultural heritage and built environment.

The environmental regulation is problematic, which enhances the meaning of the consideration in the environmental decision-making process. The environmental decision-making process aims to preserve and develop good environment, as well as hinder the environmental pollution, disfiguring landscapes and fixing the revealed damages.[104]

Since the local detailed plan act from 1931 (145/1931), there has been more open and flexible regulation that has led to a use of broad discretion. In the MRL, emphasis is on the entire process of the planning and negotiations that creates a planning decision. The co-operation between the planning, the negotiating and the assessment of the impacts of the planning are the starting point for the planning. The form of the co-operation is more flexible than before and it can be determined by the significance and effect of the plan.[105] This means that the zoning is based more on a full picture and therefore areas will be reserved for certain activities to develop the community structure, as well as being an instrument for environmental politics.[106] The MRL provides just the framework for the zoning process, in which the decision is actually made. This has features of reflexive law meaning that the law only provides the framework for the decision-making.[107] It is clear, that decision-making and factors regarding it, such as values and aims, vary at different centuries.

The general aim of the MRL is to arrange the land use and building in such way that it provides conditions for a good environment and promotes sustainable development in ecological, economical, social and cultural sense. Adding the principle of the sustainable development to the act is reasoned by the fact that the land use and transport decisions affect the ecological factor for long time.[108] The ecological sustainable development means preserving the biodiversity, sustainable use of energy and natural resources, sustainable material economy and keeping the environmental burden in minimum.[109]

The pressure for land use provokes the requirement for planning. The land use zoning system is hierarchical and is constructed so that the national land use objectives are above the hierarchy steering the regional land use plan. The regional land use plan shall be used as a guideline in

[104] *Jääskeläinen – Syrjänen* 2010 p. 42.
[105] HE 101/1998 vp p. 35.
[106] *Jääskeläinen – Syrjänen* 2010 p. 47.
[107] Ibid. p. 22.
[108] HE 101/1998 vp p. 61.
[109] See *Jääskeläinen – Syrjänen* 2010 pp.104-105.

drawing up and amending local master plans and similarly it shall be used as a guideline for local detailed plans.[110]

4.3. National Land Use Objectives

The general objective provided in section 1 of the MRL is to ensure that the use of land and water areas and building activities on them, create preconditions for a favourable living environment and promote ecologically, socially and culturally sustainable development. The aims of land use are defined in section 5 of the MRL. The third point of the section emphasis promoting beauty and cultural values. The land use aims shall be taken into consideration in all zoning and they get their content in each regulation concerning a certain plan. The general objective of the MRL for cultural sustainable development can be deemed to mean that when the community structures are developed, the starting point should be the built environment. The continuity of the cultural heritage shall be guaranteed and future changes should support the features of the built environment and landscapes.[111]

Chapter 3 of the MRL provides the national land use objectives that are given by the Finnish Government. The national land use objectives are set out to complete the aims of the land use provided in section 5 of the MRL. The national land use objectives are above the zoning system being part of the overall land use planning system. The regulation of the national land use objectives enables the Government to affect the ecological sustainability and avoid environmental hazards. The decision is made in the general assembly of the Finnish Government and the parliament has an opportunity to be involved in the discussion and make statements. This is how the national land use objectives are linked to the decision-making of the parliament.[112]

The Finnish Government is required to take into account the general objectives of the MRL and the land use planning objectives as set out section 5 of the MRL. The national land use objectives concern matters, which have international or more extensive than just a regional effect, a significant impact on national cultural or natural heritage or nationally a significant impact on ecological sustainability, the economy on local structure or avoidance of environmental damage.

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[110] See *Hollo* 2009 pp. 160-162.
[111] *Jääskeläinen– Syrjänen* 2010 p. 135.
[112] *Jääskeläinen – Syrjänen* 2010 p. 194.

The main purpose of the objectives is to ensure that nationally significant matters are taken into consideration in the planning and decision-making of the authorities. Their purpose is also to promote the execution of the international treaties in Finland. Even though the decision-making regarding planning is done on national level, the international obligations and treaties have an effect on it.[113] According to the government proposal one of the purposes of the land use objectives is also to try to secure the implementation of international treaties and promote the principals of sustainable development in the decision-making.[114] The authorities shall take into consideration the objectives and ensure the fulfilment of the requirements. The land use objectives can have effect also on the appeal process during where one could appeal to them. Pursuant to section 195 of the MRL, if a plan is drafted without taking care of the land use objectives, the local ELY –centre can refer the case back to the local authorities.

It is also mentioned that the significant impact on national cultural or natural heritage in the point 2 of subsection 2 of section 22 of the MRL could specially apply to national landscapes, nationally significant landscape entireties and nationally important cultural environments. Also the sustainable development in the general rule of chapter 1 of the MRL includes an aim of a favourable living environment and improving the ecological, economic, social and cultural development. The ecological sustainable development means, inter alia, sustainable use of energy and natural resources. The social and cultural sustainable development refers to maintenance of the environment and cultural values what is carried out by the landscape conservation. According to the decision of the Finnish Government, the nationally significant cultural environment and natural heritage values shall be preserved and the inventories made by the authorities shall be taken into consideration in the land use. Such inventories are for example the nationally significant built cultural environments, nationally valuable landscape areas and nationally significant pre-historical protection areas.[115]

In 2015, the member states of UN agreed on the aims of sustainable development and action plan Agenda 2030 that directs the promoting of the sustainable development until year 2030. Agenda 2030 obligates the countries to guarantee safety and sustainable cities and communities for their citizens. Everyone shall be entitled to enough affordable apartment, transport and conservation of the cultural and natural heritage. The Paris Agreement aims to limit the rise of the global temperature, strengthen the adaptation to the climate change and address measures

[113] See *Ekroos – Majamaa* 2015 p. 124.
[114] HE 101/1998 vp p. 69.
[115] See Valtioneuvoston päätös valtakunnallisista alueidenkäyttötavoitteista 14.12.2017 p. 3.

towards low-carbon economy. One of the goals is to promote the forms of renewable energy.[116] Climate change and extreme weather events cause everywhere in the world risks to health, economy and environment. The climate change, economy and energy security can be affected by developing sustainable community structure but this means transmission to low-carbon society where the emissions are in minimum which requires steps to be taken in every sector and land use planning has a major role in this.

In the recent national land use objectives the weakening of the biodiversity is acknowledged as one the major challenges internationally and nationally. This covers also the cultural environments, since the changes in the economy and population development cause challenges to preserve the cultural values. The cultural values are significant because of the impact on the identity of people and areas. The cultural environments can be preserved by good quality planning.[117] The Finnish cultural environment is based on the national inventories that are 1) nationally valuable landscape areas, 2) nationally significant built cultural environments and 3) nationally significant archeologic objects. These three type of areas shall be taken recognized and taken into account at the land use planning in order to preserve their values. However, a remarkable amount of important nature values, as well as valuable natural areas locate outside of the protected areas. Because of promoting biodiversity and acting in accordance with binding treaties, also other natural areas should be taken into account in land use planning.[118]

This means that not only particularly protected areas should be noticed during plans are drawn up concerning wind power, but also other areas and their values should be taken into consideration. According to the current given national land use objectives, in the assessment of wind power impacts on the landscape, also other areas with valuable nature values, should be addressed and estimate how wind turbines affect them. However, it seems that the specially determined valuable landscape areas have more weight in the legal consideration than undetermined areas with alleged special nature values. The nature values of other areas come into the court's consideration, only if there is a claim made that such values are not taken into account. Then it is up to the court to decide whether the planning or building is against the aims to promote biodiversity or cultural values. The marked landscape protection areas get naturally more attention, since they are considered already from the beginning to be remarkable and special attention is required regarding them, whereas other areas are noticed only if someone points them out, whether during the planning or building permit process or in the appeal process.

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[116] See Valtioneuvoston päätös valtakunnallisista alueidenkäyttötavoitteista 14.12.2017 p. 4.
[117] Ibid. pp. 1-2.
[118] Ibid. pp. 7-8.

However, it should pointed out herein that all required assessments of the landscape impacts are still carried out.

Even if the surrounding areas of the wind farm area are determined as nationally valuable landscape area, it is not alone a sufficient ground to prevent planning of a wind farm area. It seems that only if the impacts on the protected landscape area would be considered to be harmful, it could constitute a sufficient ground hindering the planning of the wind farm area. If the harm is determined to be only moderate, it does not usually constitute an obstacle to carry out the wind power project.

> *KHO 2018:5954*. The fact that the wind farm project could have been carried out somewhere else than at the planned area, did not have an effect on the legality assessment of the decision nor that there are valuable landscape areas in the neighbouring areas. The assessment area had reached in a distance of 12 kilometres from the wind farm area. The focus on the assessment had been from 0-5 kilometres of the wind farm area regarding description of the landscape and valuable objects. The landscape impacts had been also evaluated by illustrative pictures. Also the wind turbines close by had been taken into account. There are no nationally or regionally valuable landscape areas in the wind farm area. A culturally valuable landscape is located closest in a distance of 5.2 kilometres and from a single wind turbine 6 kilometres. There are regionally valuable landscape areas located in the north 1,7 km from the nearest wind farm area and other one 2.4 kilometres from the nearest planned wind turbine. In addition to that, there are several regionally significant culture historical objects in a distance of 12 kilometres from the wind farm area. However, based on the illustrative photos, it was assessed that the impacts of the wind turbines are weak, and in some cases not more than moderate.
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> *Pohjois-Suomen HaO 6.7.2015 15/0251/1.* The harmful effect on the valuable landscape would be only moderate and therefore not constituting an obstacle.
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> *KHO 2018:138, 139 and 140.* The cases concerned harmful landscape impacts to a valuable landscape area. The court stated that the impacts had been evaluated as required in sections 39 and 77b of the MRL. It can be concluded that even the valuable landscape areas have to bear impacts of the wind turbines.
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> *KHO 2015:1326.* The planned wind power area is within regionally valuable landscape area at the designated in the regional plan. Nationally valuable landscape areas locate in

4-7 kilometres from the area. The areas constitute together a landscape area that has been suggested to be determined as nationally valuable landscape area. The court ruled that all the relevant factors to the case and the national land use objectives as provided in section 24 of the MRL had not been taken in to consideration as should have.

KHO 2016:2807. The appeal concerned the impacts of the wind turbines to the nationally valuable culture landscape and the rural village landscape. However, the geographical formation of the land provides view obstacles preventing the impacts being significant. The closest wind turbine from the landscape area is located in 2.5 kilometres and it stands out the best from an arable area, but the court pointed out that the fields are not occupied area (*oleskelualue*), therefore the visibility does not cause any actual harm.

However, if a wind turbine would be visible from many parts of the nationally valuable landscape area, this could hinder the construction of such planned wind farm.

Turun HaO 30.6.2015 15/0172/1. The wind turbine located in a high level in the terrain would constitute a visible element in many parts of the nationally valuable landscape area and cause harm to the planning and other use of the areas. Therefore an area requiring planning decision could not be granted.

The fact that the wind farm would be located at regionally valuable landscape area does not hinder the construction, neither the possibility of determining the said area as nationally valuable landscape area in the future.

Turun HaO 12.8.2015 15/0183/1. The planned wind farm area is located in the regionally valuable landscape area. According to the court, that is not alone a ground to a rejection. The possibility that the area in question would be suggested to be determined as nationally valuable landscape area, neither constitutes a legal ground to reject the application.

Also the visibility of the wind turbines to from a cultural landscape area, does not constitute a ground for a rejection.

Pohjois-Suomen HaO 21.2.2017 17/0053/1. The fact that the wind turbines would be visible to the surrounding cultural landscape area, did not make them unsuitable in relation to the environment as provided in subsection 1 of section 135 of the MRL.

As stated previously, Paris climate agreement and climate and energy policies agreed in the EU, direct Finland's climate and energy policy. Since Finland has undertaken to increase the share of renewable energy over 50% and energy self-sufficiency over 55% in the 2020's[119], there is need to integrate these aims throughout the land use and planning system. According to the current given national land use objectives, the increase of wind power requires measures to alignment with the surrounding land use and taking into account all negative impact. Negative impacts can be reduced by placing the wind turbines in large wind farms. The logistic solutions should also be considered in the land use planning. The power lines and grids should also be taken into account already on the top of the zoning hierarchy.[120] The best areas for wind power shall be addressed in the regional plan. In Finland, the possible locations for wind farms are coast lines of the sea, Lapland's fells, coast areas for offshore wind farms in groups of 10-100 wind turbines and onshore higher hills, coastal lines of the large lakes and wide arable land areas.[121] The wind turbines should be located as windy places as possible in order to keep the costs of the electricity production low.[122]

The national land use objectives are on equal footing. Aligning the objectives and prioritization is made by case-by-case examination and the alignment between the objectives shall also be co-ordinated with the other aims of the zoning.[123] According to section 24 of the MRL, the authorities shall act according to the national land use objectives, promote their enforcement and assess the impacts of their actions to the land use. The said obligation of the authorities means that the authorities shall act only in a way that is in line with the objectives and does not reduce the possibilities to carry out the aims. Promoting requires more active measures to be taken.[124]

The effects of the objectives are passed on a single construction project through zoning. Thus, the objectives do not have direct legal impact on the preconditions of granting a building permit, but they may affect indirectly through the building granting process in accordance with section 137 of the MRL regarding an area requiring planning (*fi*: suunnittelutarvealue) or exceptions made in accordance with section 172 of the MRL.[125]

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[119] Työ- ja elinkeinominsteriö 4/2017 p. 31. See also Sipilän hallitusohjelma 2015 p. 23.
[120] Valtioneuvoston päätös valtakunnallisista alueidenkäyttötavoitteista 14.12.2017 pp. 8-9.
[121] *Jääskeläinen – Syrjänen* 2010 p. 205.
[122] Valtioneuvoston selonteko 2/2000 p. 38.
[123] *Jääskeläinen – Syrjänen* 2010 pp. 208-209.
[124] Ibid. 2014 p. 212.
[125] Ibid. 2014 p. 215.

Regarding wind turbines, it is stated that the best possible areas for wind power to utilise shall be addressed in the regional plan and the wind turbines should be primacy located centralised in batches, including several wind turbine in each wind farm. The requirement is easy to understand, because it is better to have the impacts on fewer areas compared to a case, where wind turbines would be separated from each other. In the national land use objectives, there is set out an obligation to the regional council to consider and address suitable areas for wind turbines. As mentioned previously, the aim is to centralise the wind turbines on a certain area and so the impacts of them would not affect so large area including the impacts on the landscape being visible for higher amount of people and causing more harm. In the guideline of the Ministry of Environment, it is pointed out that one poorly located wind turbine can have more adverse effect than a carefully planned entire wind farm.[126]

Regarding wind turbines, the objective of preserving and promoting cultural and landscape values may conflict with the aims to increase the amount of wind power. This is when the decision-makers shall weight the different values. Principles and aims affect the consideration of the authorities, meaning that a written aim in the MRL could have a great impact on a decision to be made.

4.4. Zoning

The zoning system is hierarchical upper plans steering the lower plans. In Finland the zoning system is not covering the whole surface area. Under the local detailed plan, which is the most detailed plan, is only a small part of the land. A regional plan is mandatory but its guiding effect on a property level is quite weak due to its conceptuality, same concerning the local master plan. [127] Regarding the wind power, the objectives to promote wind power construction arise out from the national land use objectives as stated in the previous chapter. The reservations for significant size wind power areas are addressed in the regional plan and more careful planning is carried out in the local master plan. Concerning wind power there are also special so called wind power master plans, meaning a plan that addresses the wind power area and the building permit can be directly based on it. Otherwise an area requiring planning may come in question. In some cases also a local detailed plan is required.

[126] Ympäristöministeriö 5/2016 pp. 21-22.
[127] See *Hollo* 2009 pp. 160-162.

The hierarchical zoning system.

4.4.1. Regional Plan

A regional plan is the first plan steering the drafting of the other plans. The principles of land use and community structure are provided in the regional plan, as well as the necessary areas to develop the region are addressed in the plan. A regional plan is a general plan of the land use in an area or in its divisions and it is used to direct the more detailed planning.[128] Due to the hierarchy between the plans, the national land use objectives shall be taken into consideration in the regional land use planning.[129]

A regional council, for example the regional council of Lapland, draws up the regional plan and is responsible for developing it. [130] Besides other matters listed in section 28 of the MRL, the protection of landscape, natural values and cultural heritage shall be taken into account in drafting the regional plan. Further section 30 provides possible necessary protection regulations that can be given when some area requires protection due to its landscape, natural values, built environment, cultural and historical values or special environmental values.

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[128] *Kuusiniemi* et al. III Ympäristökäytön sunnittelu > 3. Maakuntakaavoitus > Maakuntakaavoituksen tarkoitus.
[129] *Kuusiniemi* et al. III Ympäristökäytön sunnittelu > 3. Maakuntakaavoitus > Maakuntakaavoituksen tarkoitus > Maakuntasuunnittelun tehtävät.
[130] See *Hollo* 2009 pp. 163-164.

The decisions made in the drafting process have a regional impact.[131] In order to designate a wind power area in a regional plan, it shall be at least regionally significant in size. What size wind farm is significant depends on the features of the region.[132] Regarding the construction of wind power plants, the suitable areas for building wind farms are designated in the regional plan in order to steer and reduce in overall the environmental impacts of the wind turbines.[133] As to the wind power, is stated in the objectives in land use planning of the Government, that wind turbines shall be primarily located in groups. The valuable areas where wind turbines should not be constructed at all can be also designated in the regional plan. The amount of wind turbines is not being limited in the regional plan; rather the minimum amount shall be limited. In order to designate a wind power area in the regional plan, the area should be able to withstand 8-10 wind turbines. The amount can vary according to the decision made by the regional council.[134]

The aim of the Government is to address the nationally significant cultural environments and landscapes in the regional plan. The regional plan is supposed to pay attention to perceiving the national landscape and cultural environment values, maintaining the nationally and regionally significant landscapes and harmonising with the other land use. In principle, the nationally and regionally valuable landscapes are deemed to be unsuitable for wind turbines. In the drafting phase, a report of the planned area is made to investigate the suitability of the area for wind power considering the wind speeds, location with respect of the power lines, connection points, roads and the relation to the other land use and environment, like landscapes and cultural environment.[135]

Thus, in regional plan, the relation between the wind power areas and the landscape and the importance of the landscape values is determined, when the amount of the wind turbines is decided defining is the wind farm being regionally significant in size. For a part of the landscape, the nationally and regionally valuable landscapes shall be mapped out, as well as the structure of the landscape and its different areas and features. The effects on the landscape values and the visibility of the wind turbines are evaluated during the process. Documents concerning the plan include the visual impacts and possible mitigation solution measures and they are illustrated by perceptual and visual field analysis.

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[131] *Kuusiniemi* et al. III Ympäristökäytön sunnittelu > 3. Maakuntakaavoitus > Maakuntakaavoituksen tarkoitus > Yleispiirteisyys.
[132] Ympäristöministeriö 5/2016 p. 23.
[133] Ympäristöministeriö 4/2012 p. 17.
[134] Ibid. p. 18.
[135] Ibid. p. 19.

The regional plan steers the drafting of the local master plan, which is drawn up by the local authorities.[136] According to subsection 1 of section 54 of the MRL, if the municipality has not a valid local master plan, the regional plan shall be the basis for the local detailed plan. The other plans can differ from the regional plan, only if the main objectives and solutions are not jeopardized. A decision contradictory to the regional plan is not possible without amending the regional plan. In such case, a lower plan in the hierarchy cannot designate regionally significant wind power area anywhere else than to the area designated in the regional plan.[137]

4.4.2. Area Requiring Planning

Drafting a plan is delayed often for one reason or another which leads slowing up the construction projects or even hindering the realisation of them totally. For this reason an area requiring planning system has been created to help construction areas that have lot of pressure to be developed. Its role is to try to guide the building and other land use in developing areas. A general area requiring planning concerns all kind of areas not covered by a local detailed plan.

The aim of the area requiring planning is to set out extra conditions for granting a building permit. Granting a building permit is allowed on an area requiring planning only if the provisions provided in section 137 of the MRL are fulfilled. Otherwise the area requiring planning does not set out any special requirements for land use.

In accordance with section 16 of the MRL, an area requiring planning is drafted in three cases. An area requiring planning means an area the use of which involves need that require special measures, such as road, water main or sewer construction or arranging other areas. The purpose of the areas requiring planning is to prevent such land use that without planning would cause economically, structurally or environmentally adverse development. If there is no approved local detailed plan for the local master plan, building at the area is required to be suitable from the visual point of view and it is not allowed to hinder preserving the special natural and cultural values.

The provisions concerning areas requiring planning apply to construction having so substantial environmental impacts that it requires more comprehensive consideration than the normal

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[136] *Kuusiniemi* et al. III Ympäristökäytön sunnittelu > 3. Maakuntakaavoitus > Maakuntakaavoituksen tarkoitus

[137] See Ympäristöministeriö 5/2016 pp. 23-25.

permit procedure. Building may require more comprehensive consideration due to the significance of its environmental impacts. So, in a case that the wind farm project has significant environmental impacts, the provisions concerning areas requiring planning are applicable. The assessment of the environmental impacts is affected by the location and other features. It is not about the actual area requiring planning area, but about the significant environmental effects that cause that section 137 becomes applicable to the permitting process. Section 137 does not only refer to cases where the EIA –procedure is applicable hence the environmental impacts.[138]

The provisions regarding area requiring planning apply also to building that requires wider consideration because of the environmental impacts of the planned project, even though it would not locate on an area requiring planning pursuant to section 16.2 of the MRL. Such project could be for example a factory building or some other large building or project that causes emissions. [139] A wind power plant or a wind farm project can be deemed to be such project that requires more consideration than an ordinary building project.[140] Regarding a wind power plant, area requiring planning may be necessary even for one wind power plant, depending on its location and size. [141] Also in general, only one building can be deemed to be significant. [142]

Even though construction of industrial size wind power plant can be deemed to be significant, pursuant to the government proposal to amend the MRL, constructing wind power plant to already built industry or harbour area should not be seen as significant building. [143] This could be used as an argument for constructing wind power plants to other suitable areas.[144]

Local authorities of the municipality may designate areas, where due to their location, community development requiring planning may be expected, or where land use planning is needed because of the special environment values or hazards. Such order from the local authorities is in force for a maximum of ten years at a time.

A planning requirement decision means an order from the local authorities. The decision indicates that a building permit cannot be granted without an existing plan and no exceptions

[138] *Jääskeläinen – Syrjänen* 2010 p. 161.
[139] HE 101/1998 vp p. 66.
[140] *Jääskeläinen – Syrjänen* 2010 p. 161.
[141] Ympäristöministeriö 4/2012 p. 26.
[142] *Jääskeläinen – Syrjänen* 2010 p. 167.
[143] HE 84/2013 vp p. 3.
[144] *Kovari* 2014 p. 10.

are not allowed. The term as such is not defined by the legislation, but is widely used both in the planning practice and the guidelines of the environmental administration.

Section 137 of the MRL set out specific conditions for granting a building permit in areas where planning is required. An area that is not covered by a local detailed plan a building permit can be granted provided that the construction does not cause harm to other land use, and is in line with the community development and is appropriate regards to the landscape and does not hinder preservation of the values of the natural or cultural environment. However, the MRL provides a specific provision concerning wind turbines. According to section 77a of the MRL a building permit can be granted despite the special preconditions of section 137, when there is a legally binding local master plan and it has been particularly stated that a building permit can be based on the plan or part of it.[145]

4.4.3. Local Master Plan

More detailed planning, land use and building is based on a local master plan. The purpose of the local master plan is to direct the community structure and land use and integrate functions within the municipality. The local master plan can concern the whole area or only specific areas, the plans concerning only part of the municipality's area is called also a partial local master plan (sub-area local master plan, *fi:* osayleiskaava). The plan may also be drafted in different phases. There are two different types of local master plans: legally binding and non-legally binding. A non-legally binding local master plan is sufficient as frame for the planning of the municipality but it is not sufficient for granting building permits. In lack of a local detailed plan, a legally binding local master plan can be used as a guideline for building.[146]

According to subsection 2(7) of section 39 of the MRL, the protection of the built environment, landscape and natural values shall be taken into account when the local master plan is drafted. Section 41 provides a possibility to give protection regulations regarding areas or building that shall be protected due to their landscape, natural values, built environment, cultural and historical values or other special environmental values.

A building permit can be issued based on the local master plan, if it is allowed pursuant to a legally binding local master plan and the plan is steering enough the building and other land use, however, not concerning the areas where a local detailed building permit is required. A

[145] *Jääskeläinen – Syrjänen* 2010 pp. 35-36.
[146] Ibid. pp. 166-167.

legally binding local master plan directs the decision-making of the local authorities, whereas a non-legally binding local master plan is more like a political and strategic planning.

The appropriate areas in terms of landscape for the wind power production are decided in the local master plan. In accordance with the landscape assessment report, the landscape values and special features are presented in the plan report (kaavaselostus). Also the relation of national land use objectives and regional aims to the planned wind farm area and landscape is reviewed in the plan report. The report includes also the municipality's own aims regarding wind power production and preservation of landscapes. The impacts on the landscape are illustrated by pictures and analysis. [147]

> *Vaasan HaO 20.3.2018 18/0102/3.* According to the ruling concerning subsection 1 of section 39 of the MRL that the regional plan shall be taken into account when the local master plan is drafted. The administrative court ruled, that the requirement set out in the referred section does not mean that designating a wind power area in the regional plan is a precondition for drawing up a local master plan that directs the wind power construction.

Pursuant to section 34 of the LSL, the landscape area orders do not apply to areas that are covered by a local detailed plan or a legally binding local master plan. The landscape area orders can be replaced by a local detailed plan or a legally binding local master plan. The landscape issues shall be taken into consideration in the more detailed planning and the land use is dealt in its entirety. The established landscape areas shall be taken into account during the planning process. The new plan should have independent orders to preserve the essential features of the landscape. In such case, the application of the landscape area orders is unnecessary.

4.4.4. Local Master Plan concerning Wind Power

Besides the local master plan, there is also a local master plan that directly steers the wind power construction. If there is such plan in place, the building permits can be granted based on the local master plan. A plan that is directly steering the wind power construction can concern the whole local master plan of the municipality or part of it or it can be drawn up together with other municipalities.

When a local master plan, that is directly steering the construction of wind farms, is drawn up, it is required that the local master plan steers sufficiently the construction and other land use on

[147] Ympäristöministeriö 5/2016 pp. 26-27.

the area. In addition, the planned wind power construction shall adapt to the landscape and the surrounding environment, as well as the maintenance and electricity transmission shall be possible to arrange. According to section 77b of the MRL, the adaptation to the landscape shall be taken into account.

A special chapter 10 a concerning wind power construction was added to the MRL in 2011 (amendment 134/2011).The purpose was, that granting building permits could be based on the local master plan.[148] The preconditions to grant a building permit based on the local master plan, the special content requirement for the plan and the possibilities of the municipality to charge the costs of the drawing up the plan from the project developer are determined in the said 10 a chapter of the MRL. Even though wind power construction can be based directly on the local master plan, there is still in force the steering effect of the regional plan and the purpose of the revision was not to change that at all. The regional plan directs wind power construction as previously. The amendment was not also mean to erase the need for local detailed plan, when a planned wind power project is deemed to require more detailed land use planning for example when other needs of the land use of the area or nature values require alignment in terms of more detailed planning. In such case there is still need for draw up a local detailed plan. [149] Section 77 a is essential hence requirement set out in section 16.2 of the MRL apply also to such construction that requires wider consideration than normally because of the significant environmental impacts. According to section 137.3 of the MRL building at an area requiring planning cannot lead to significant building from its impacts or cause significant adverse environmental impacts. In other words, section 77 a erases the obstacle to grant a building permit in accordance with section 137.3 that would normally apply because of the impacts of wind power construction. Impacts of the wind power plants can be sort out in the local master plan and in such case no area requiring planning decision or local detailed plan is required.

Regarding wind power construction, there shall be a specific order in the local master plan that addresses in which area building permit may be granted directly on the basis of the local master plan. The local master plan does not need only to concern wind power construction; the aforementioned orders may be taken as part of sub-partial plan or a plan concerning the whole municipality area. However, the plan shall fulfil the special requirement set out in section 77b of the MRL.[150]

[148] *Ekroos – Majamaa* 2015 p. 507.
[149] Ibid. p. 508.
[150] *Ekroos – Majamaa* 2015 p. 509.

Drawing up a local master plan steering wind power construction, such plan must first of all steer also other building and land use sufficiently at the area in question. The conditions, planned building and amount and efficiency shall be taken into account at assessing the sufficiency. The local master plan shall indicate the location of the planned wind turbines with sufficient accuracy so that such order can be taken into the plan. Without exception, the locations shall be addressed precisely. This requirement arises out from the obligation to be able to assess the environmental impacts enough carefully as set forth in section 9 of the MRL.

Regarding wind power the plan shall be applicable to direct the wind power plant construction. In general it can be noted that a local master plan is sufficient to steer construction.[151] According to the government proposal a local master plan is applicable to wind power construction mostly on water areas and in some cases also at onshore areas that are located in enough long distance from housing and other land use that has special requirements regarding the land use. However, the regulation itself does not set such strict requirement for a wind power master plan. The starting point in the government proposal is that the area in question does not have other land use that would require alignment and co-ordination with wind power construction.[152] Naturally if the area requires more detailed planning, it would trigger an obligation to draw up a local detailed plan. Usually using a local master plan as basis for granting building permit is not possible near urban areas.[153]

The adaptation of the planned wind farm and other land in relation to the landscape and surrounding environment shall be also taken into account in the local master plan concerning wind power as the wind turbines have without exception significant impacts to the landscape and environment.[154] According to the government proposal the requirement of adaptation to the environment shall be interpreted case-by-case basis from the conditions of the planned project as starting point.[155] The assessments and reports of the adaptation shall take into account nature values and nature conservation, cultural environment values and the quality requirements regarding living environment. Besides, on the water areas also the underwater nature and environment, as well as fishing aspects shall be taken into consideration.[156]

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[151] Ibid. p. 511.
[152] HE 141/2010 vp pp. 10-12.
[153] *Ekroos – Majamaa* p. 508.
[154] Ibid. p. 512.
[155] HE 141/2010 vp pp. 10-12.
[156] *Ekroos – Majamaa* 2015 p. 512.

According to section 77b of the MRL, the land use shall adapt to the surrounding environment and landscape. As defined previously adaptation to the landscape means that the object fits into the landscape not destroying any valuable features. Preserving the landscape means saving and maintaining a landscape not precisely trying to keep it as it is, but taking care that the nature and values of the landscape do not change significantly. Assessment of the adaptation to the landscape required a mapping of the features and elements and afterward they can be compared to the wind turbines. If there are already wind turbines in the fields of vision, a new wind turbine does not affect the landscape significantly.

> *KHO 2015:628.* The court ruled that there is no preconditions to grant an area requiring decision, because the wind farm would be located four kilometres from the urban centre area. The project developer appealed to the fact that there are already wind turbines dominating the landscape, thus the impacts of the two new planned wind turbines would be weak.
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> *KHO 2018:1521.* The fact that the surrounding area of the property owners is being used for forestry mitigates the landscape impacts of the wind farm. Based on that, the court argued that the landscape impacts do not constitute significant effect on the land of the property owners. The court ruled that the tolerance of the landscape is not exceeded.
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> *Pohjois-Suomen HaO 12.5.2017 17/0124/1.* The ground for the appeal was that the wind turbine causes harm to the landscape as provided in section 135 of the MRL. The court stated that seeing the wind turbine from the property did not constitute such harm that is meant by the said provision.
>
> *Pohjois-Suomen HaO 28.11.2017 17/0281/1.* The applicant claimed, inter alia, that the wind farm project would hinder maintaining the special nature and culture values. It was ruled that the construction of the wind turbines would not affect negatively the protection of the aforementioned values.

In case law wind turbines being distinguished from the landscape or being seen from a distant has not been deemed as a limiting factor. The mere fact that the wind turbine is visible and seen from different places, does not make the wind turbine unsuitable or does not give a valid ground for an appeal to success. It can be also concluded that the level of the tolerance of the impacts is determined to be bearable *(fi:* siedettävä*)*. Thus, the landscape impacts may be at least bearable meaning that the landscape shall tolerate some kind of changes.

KHO 2015:1271. The court stated in the reasoning that installing wind turbines will always cause changes in the landscape. However, it is not alone a ground not to allow constructing them.

Hämeenlinna HaO 28.4.2015 15/0158/2. The fact that the wind turbines stand out from the landscape and are visible in many kilometres is not as such considered to be unreasonable harm to the housing and other environment.

Vaasan HaO 31.3.2016 16/0136/3. Although that the wind turbines are visible in a long distance, the impacts on the landscape can be considered to be bearable.

The possible future tree cutting down -scenario did not affect the court's decision. The impacts of the wind turbines may change radically if they have been previously in the protection of forests.

KHO 2016:147. The fact that the area where the wind turbines are planned to be built, is rich in forests and the wind turbine only is 12 meters high, did not make the impacts on the environment to be significant. The appellant claimed, that the lake landscape is sensitive and in case the trees are cut down, the wind turbine becomes visible harming the landscape. This kind of possible scenario where the trees would are cut down, did not constitute such ground that the construction of the wind turbine would require more detailed planning or an area requiring planning decision.

There is still a question left whether the crucial point was that the lake landscape being harmed is not that special or that the court is looking into the current situation of the landscape. It should be noticed that after a tree cutting, the visibility of wind turbines that can increase significantly. Should the court take into consideration such possible future changes in the landscape, is a relevant issue to point out in general.

According to the case law, 3 kilometres is deemed to be sufficient distance for the evaluation. Though, in some cases it might be that due to the geological formation that the assessment is required to be carried out from longer distance.

KHO 2017:2563. The ground for the appeal was inadequate landscape assessment according to the requirements set out in section 39 and section 77b of the MRL. The impact on the landscape had been evaluated from a 3 kilometre's distance from the wind farm. From some points over 10 wind turbines could be seen. The court stated that the assessments are sufficient regarding the content requirements of the local master plan.

The local master plan concerning wind power shall comply also with the general provisions of chapter 5 of the MRL and examination and assessment provisions set out in section 9 of the MRL. In addition the wind power plan shall fulfil the requirements defined in section 39 of the MRL. Also the regional plan shall be taken into account as set out in section 32.1 of the MRL, so the regional plan steers the wind power plan as well. Because of the specific nature of the provisions in section 77 b, not all issues pursuant to section 39.2 are relevant drawing up the wind power plan.

It should be pointed out that a local master concerning wind power shall not cause unreasonable harm for a landowner or other right holder. The assessment is overall consideration in which the local master plan as well as the orders shall be considered.[157]

The land owner's rights have been present in some cases concerning the impairment of the property. According to the recent case law the impairment of property caused by wind turbines is not deemed as unreasonable harm defined in subsection 4 of section 39 of the MRL.

> *KHO 2013:184.* The court stated that the impacts of the wind turbines may effect on the value of the property, is not considered to be unreasonable harm as determined in subsection 4 of section 39 of the MRL.

According to the case law, the visibility of the wind turbines is not alone such factor that is considered to be unreasonable harm.

> *Vaasan HaO 28.11.2017 17/0547/3 and 23.4.2018 18/0149/3.* The fact that the wind turbines would be visible from the appellant's property and would possible cause impairment of the property, did not constitute unreasonable harm to the land owner as meant in the MRL.

4.4.5. Local Detailed Plan

As stated in section 50 of the MRL, the purpose of the local detailed plan is to address even more detailed land use than what the local master plan has designated. A local detailed plan is supposed to direct the construction and other land use in line with the local conditions and, townscape and landscape, good building practice and promoting the use of existing buildings and other aims of the plan. As pointed out previously, the regional plan and the legally binding local master plan steer the local detailed plan. Section 54 of the MRL sets an obligation to

[157] *Ekroos – Majamaa* p. 513.

preserve the built and natural environment and their special values shall not be destroyed. The local plan includes also a building restriction provision meaning that a building is not allowed to build against the local detailed plan. Besides to the local master plan, the municipal council approves also the local detailed plan.

Regarding a wind farm project, a local detailed plan is necessary, when construction of the wind farm and the coordination with other land use requires it. The construction may require more detailed planning, if the location of the planned wind farm is close to an urban area, an industrial area or a harbour. In such case more careful planning and assessment is demanded due to the surrounding land use and the environmental impacts of the wind farm. A local master plan that is directly steering the wind power construction can be used in situations where the coordination between the construction and other land use can be carried out in a more general local detailed plan. When determining is the local master plan that steering directly the wind power construction sufficient or not, more weight is on the location of the wind farm than how many wind turbines the farm includes.[158]

The local detailed plan and the local master plan steering directly the wind power construction aim to address the area for the wind farm and the precise locations for each wind turbines and the other preconditions for the project. If there is already in place a local master plan or regional plan that has designated appropriate areas for wind power production, the more detailed plans can focus on more precisely planning for example placement of the single wind turbines.

In terms of the landscape, the landscape values, locations and placements of the wind turbines, the amount and the height of the wind turbines, roads within and outside the wind farm and electricity transmission and possible maintenance building and possible protection areas and objects shall be taken into consideration

Regarding landscape protection provided in the LSL, the MRL shall prevail when it comes to a local detailed plan. Pursuant to section 34.3, the provisions concerning landscape conservation in accordance with the LSL shall not apply to local detailed plan nor to legally-binding local master plan. The measures to be taken in order to protect landscape and alignment with the activities planned to area are examined and pointed out carefully enough in the plans, so basically there are no need for the provisions set out in the LSL. The provisions concerning the

[158] *Jääskeläinen – Syrjänen* 2010 pp. 33-34.

legally binding local master plan and local detailed plan take care of the aspects of landscape protection.[159]

4.5. Building Permit or Action Permit

A building permit pursuant to section 125 of the MRL is always required for the construction of a building. In some cases, instead of a building permit, an action permit pursuant to section 126 is sufficient. The local building control authority grants both of them. Almost every time a wind turbine is regarded as a building requiring a building permit as follows from section 125 of the MRL. According to subsection 1(4) of section 126a of the MRL, wind power plant is defined as a machine constructed based on an action permit. In practice all the wind turbines constructed nowadays require a building permit. An action permit may be sufficient when a small wind turbine for household use is being built. A report of the impacts on the landscape and neighbours shall be attached to the building permit application.

When the wind turbine is in industrial size range, it should always be based on a plan or an area requiring planning decision. The location of the wind turbine shall be resolved in the planning process before a building permit can be granted. If the plan has not gained legal force yet, the commencement of the construction is not allowed before the plan has come into force. The construction project shall be in compatible with the local master plan concerning wind power or local detailed plan, meaning that the impacts of the wind turbine shall be in accordance with the determined impacts in the plan. Naturally, the project developer is responsible for acquiring all necessary permits and ensuring that the permits are in force before commencing the construction works.[160]

The provisions of chapter 10a make possible to grant a building permit under certain conditions directly based on a local master plan. The quality of the building is not determined in section 72, previously construction of the wind turbines on shore areas, at least in principle, can have been based directly on a local master plan. The provisions in chapter 10a follow on from the objectives to promote wind power construction and the increase of the wind power projects. In addition, the size of the wind turbines and capacity is growing all the time. As stated also in the

[159] *Ekroos – Majamaa* 2015 p. 362.
[160] *Jääskeläinen – Syrjänen* 2010 pp. 37-39.

government proposal[161], the provisions of the previous MRL have not been sufficient steering the construction of the wind power.

Pursuant to subsection 3 of the 171 of the MRL, constructing a wind turbines in industrial or harbour area in accordance with a local detailed plan, is not deemed to be significant from its impacts. In terms of landscape, industrial and harbour areas already include elements that have a larger or at least as large impact on the landscape that the building needs no more detailed planning. In both areas, there are high buildings and the landscape is already shaped heavily, so the wind turbines do not usually bring a significant difference in the nature of the landscape.

A building permit can be granted without section 137 stopping it, if it is stated especially in a legally binding local master plan that it can be used as ground for granting a building permit. According to subsection 3 of section 44 referring to section 77a, the fulfilment of the special preconditions can be declared in the local master plan and in such case granting a building permit shall not require a planning requiring decision or a local detailed plan.

According to the government proposal local master plan is applicable to wind power construction mainly at onshore and offshore areas that are located enough far away from populated areas and other land use with special features. If the coordination between the wind power construction and other land use demands more detailed planning, local master plan is not sufficient. As stated in the government proposal, such areas include neighbouring areas, urban areas and other areas having pressure to develop.[162]

The courts have assessed whether a wind power plant can be constructed based on a planning requiring decision or is planning demanded. Based on the case law, it seems that the use of the area requiring planning decisions is rather small. In most case when there is housing nearby, the planned project requires a local detailed plan or a local master plan directly steering the construction of wind power. Regarding a local master plan that is directly steering the wind power construction, the plan shall direct sufficiently other constructing and land use. The location of the wind turbine shall be announced precisely and the planned wind power construction shall adapt to the landscape and environment.[163]

[161] HE 141/2010 p.4
[162] Ibid. p. 4.
[163] *Hallberg* et al. 10 a luku (134/2011) : Tuulivoimarakentamista koskevat erityiset säännökset.

4.6. Environmental Impact Assessment Procedure

EIA -procedure may be applicable to wind farm projects that fulfil certain preconditions. The purpose of the EIA Act is to promote the assessment of environmental impacts in the planning and decision-making and enhance the possibilities to attend the decision-making process. The aim is to reduce and prevent the harmful environmental impacts of the project. The impact on the landscape are defined as environmental impacts according to subsection 1(c) of section 2 of the EIA Act. The EIA -procedure is applied to wind farm projects including at least 10 wind turbines or the total capacity is at least 30 MWh. The government is planning to propose to increase the minimum level up to 45 MWh.[164]

If the wind power project falls in the scope of section 6 of the Decree on the Environmental impact Assessment Procedure (277/2017) because of its significantly harmful environmental impacts, the procedure may be required even the number of the wind turbines is smaller or the total capacity is lower than stated in EIA Act. The features and the location of the planned wind farm is taken into account in the decision-making whether the procedure should be applied or not. Also the location of the nationally and regionally valuable landscape areas in relation to the project is taken into consideration. Regarding the landscape the following shall be considered as applicable in the assessment:

1) a preliminary estimate of the area effected
2) a general description of the features and values of the landscape effected
3) a preliminary estimate of the allocation of the visual impacts
4) a preliminary estimate of the likely impacts on the landscape and the significance of the discovered impacts.

The description of the current condition of the landscape and environment is recommended to make as widely and precisely as possible. Also a description of the evaluation methods and impact should be attached. Even if the project is not subject to the EIA –procedure, section 25 of the EIA Act set out an obligation to the project developer to be aware of the impacts of the project in a sufficient way.[165]

The landscape impacts are once more on the table during the EIA –procedure. However, the requirement provided in the different acts are partly overlapping meaning that a new assessment or description is not required every time when the project is evaluated in different phases. From

[164] HE 102/2018 vp. p. 30.
[165] Ymparistöministeriö 1/2016 p. 29.

the aforementioned regulation it can be concluded that the landscape values and the importance of perceiving valuable landscapes is taken into account through the planning process, as well as the permitting process. Regarding wind turbines, the impacts of the wind farm on the landscape are evaluated in each phase. The question that arises out often in a possible court case is has the impacts been evaluated sufficiently. This issue will be returned later.

In general the EIA –procedure has brought new kind of consideration to be performed in the zoning process. Hence the EIA –procedure the zoning requires deeper and more versatile assessment and consideration. According to the EIA, the environmental aspect should be present at all kind of activities of the society that have significant environmental impacts. The need for assessment depends on the project. Naturally the need for assessment increases the more significant the values of the nature, landscape and cultural heritage are at the project area. The zoning process should be developed in line with the EIA –procedure, so then they affect each other and fulfil possible gaps. In recent years the EIA -procedure has required that an assessment of visual impacts is carried out 20-35 kilometres from the project area. [166]

4.7. Guideline of the Ministry of Social Affairs and Health

According to the statements of the Ministry of Social Affairs and Health, there should a 2 kilometres' safety distance between a wind turbine and housing. In many appeals can be seen that the applicants rely on the recommendation of the Ministry of Social Affairs and Health. Pursuant to the recommendation, there should be always a distance of 2 kilometres between housing and a wind farm. [167] The courts have, however, stated systematically that such recommendation is not determined by the law and the courts are not obligated to follow it in their decision making. Although the distance has significance in relation to the noise impacts, but that is excluded from the scope of this thesis, therefore I have only look into cases that the distance is relevant regarding the landscaping issues. The distance can be brought up for other reasons also, for example safety related issues but those are not analysed herein. In several occasion, the rule of 2 kilometres has been appealed to. Nevertheless, the courts have pointed out that there are no binding provisions which would require to locate the wind turbines in distance of 2 kilometres from the housing.

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[166] *Jääskeläinen – Syrjänen* 2010 p. 143 and p. 147.
[167] Sosiaali- ja terveysministeriö 2013. Available at: https://tvky.info/wp-content/uploads/2013/10/Liite_1_Lausunto_Varsinais-Suomen_tuulivoimavaihemaakuntakaavasta.pdf.

KHO 2018:1121. It was stated in the reasoning of the decision that there are no such valid regulation that would determine a safety distance between a wind turbine and housing.

KHO 2018:1130. It was deemed that 2 kilometre's distance between the wind farm and the property is not causing unreasonable harm such as meant in subsection 4 of section 39 of the MRL nor is against the protection of property as set out in the Finnish Constitution.

KHO 2015:1271. In the case three secondary residence houses and three unbuilt property locate under one kilometre from one of the wind turbines. The appellant pointed out the recommendation of the Ministry of the Social Affairs and Health. The court rejected the appeal.

Itä-Suomen HaO 16.1.2017 17/0013/3. The closest residential building is located in 800 metres and the distance to the housing is one kilometre. The court stated that the wind power project causes more impacts and on a wider area than an ordinary building and therefore accepted the appeal.

Hämeenlinnan HaO 22.4.2018 16/0178/2. 1,7 kilometre's distance between the wind farm and the property is not deemed to cause significant impacts on the working, living and other conditions of the land owner that they would create an obstacle to install wind turbines.

Pohjois-Suomen HaO 10.3.2015 15/0066/1. When taking into consideration that the holiday house is located in 3 kilometres from the closest wind turbine mentioned, the building permit is not deemed to affect the building and other use of the land as provided in subsection 1(2) of the 192 of the MRL. The wind farm is close to a holiday housing area at the lake.

Pohjois-Suomen HaO 15.10.2015 15/0358/1. The planned project are is located between two cities and there is housing on every side in distance of one kilometre from the wind turbines and therefore they would be too close to the housing. The court ruled that the wind turbines would stand out in the landscape anyway and that alone is not a legal ground to reject the plan.

A close distance between a wind farm and a nature reserve does not necessarily constitute an obstacle for a project.

> *Hämeenlinnan HaO 3.6.2016 16/0248/2.* The distance of 700 metres between the planned wind turbines and the nature protection area did not jeopardise the aims of the nature conservation.

The valuation of the assessment is performed case-by-case and all surrounding factors in the environment are taken into consideration. The acceptable distance cannot be determined in meters. Some distances are used to compare the acceptability of different projects. The court has not been keen on agreeing with the 2 kilometre's safety distance that was brought up by the Ministry of Social Affairs and Health. This would not be appropriate in the sense that the areas can vary a lot from each other's. However, as we can see from the case *Itä-Suomen HaO 16.1.2017 17/0013/3,* the 800 meters' distance to the closest housing was too short. If some kind of weak rule should be concluded from the above cases, it seems that it is possible to locate a wind farm 2 kilometres from a housing, but less than one kilometre is too short distance.

4.8. Guideline of the Ministry of Environment

The guideline of the Ministry of the Environment points out the focal length of the lens when the assessment photos are taken. The focal length of the lens has an effect on the degree of accuracy and quality regards obtaining a true picture of the landscape.[168] However, pursuant to case law it does not constitute such lack that the assessment is deemed to be insufficient.

> *Pohjois-Suomen HaO 23.5.2016 16/0147/1.* The length of the lens had not been informed regarding the illustrative photos. The appellant claimed that it is a critical point in order to evaluate the truthfulness of the pictures and how the wind turbines are visible in the landscape. The court considered that although the length was not informed, it does not constitute such lack that the assessment of the landscape impacts shall be considered insufficient.

Small technical matters do not determine whether the assessment has been sufficient or not. However, such matters can have a significant effect on quality of a photo in terms of how illustrative and truthful it is.

[168]Ympäristöministeriö 1/2016 p. 46. See an illustrative example on page 47.

5. CONCLUSIONS

Globally the parties to the Paris Agreement have undertaken to take necessary steps regarding climate change. The Finland's climate and energy policy and regulation is also based on the climate and energy policies agreed in the EU. As the directives are binding, also directly after a certain time if they have not been implemented in the national legislation[169], Finland is obligated to change the legislation and actions need to be taken in accordance with the EU rules.

Since Finland has set out national target to increase the share of renewable energy over 50% and energy self-sufficiency over 55% in the 2020's, there is need to integrate these aims throughout the land use and zoning system.[170] There are many aspects to be taken into account at increasing the amount of wind power plants but landscape is one of the major objects in which the wind power plants have effect. At same time, Finland is obligated to comply with different landscape and cultural environment conservation conventions to protect and preserve natural and cultural landscapes. They shall be taken into consideration in the land use and zoning.

A landscape in general is not governed by certain act. There are no actual legislation regarding landscape impacts of wind power plants, but the regulation has been shaped by the guidelines of the Ministry of Environment and case law. The aims for the renewable energy will become quite empty if the construction of the wind turbines is hindered in practice. As stated previously the planning ideologies are bound by time and place, in other words today's planning ideologies should be leaning on the values being present at the moment that are strong protection of environment and nature, as well as the mitigation of climate change. Both of the aforementioned aspects are linked to the aim of increasing renewable energy, also the protection of environment, although it may conflict with landscape conservation, if we consider renewable energy as a protection measure of environment.

In general the acceptance of wind power is on rather high level. According to different studies over 84-87% of Finns would like that the amount of wind power would be increased in Finland.[171] I believe that people's attitude will soften as the wind turbines are built more and they will become more visible in the general picture. However, the main problem is still there and that is the beauty issue of the wind turbines. The beauty and proportionate of wind turbines

[169] As pointed out in chapter 2.3 of this thesis, in the case *Grad v Finanzamt Traunstein*, it was ruled that a directive could be directly effective, if it sets out an obligation to achieve a required result.
[170] Työ- ja elinkeinominsteriö 4/2017 p. 31.
[171] Työ- ja elinkeinoministeriö 2013 p. 23.

and the adaptation to the landscape are the main topics. The aforementioned factors are preconditions set out for building in the MRL and they should be valued objectively in the decision-making. However, the objective valuation is difficult, almost impossible as the fact that the decision would please everyone.[172]

Even though the aim of protecting landscape and increasing wind power may conflict, there are solutions to take enough care of the landscape conservation. At the moment nationally valuable landscape areas and other significant landscape areas are addressed in the regional plan. The conservation of the landscape is fulfilled by not placing wind farms at such areas. According to the case law the visibility of the wind turbines is not an obstacle for constructing wind turbines. Wind turbines are so large in their size, that the fact of them being visible, shall be accepted in general in order to fulfil the requirements to increase renewable energy, especially wind power as it is the most efficient and economical way to produce renewable energy in Finland.[173]

The fact that wind turbines are visible randomly and in small amounts from housing or valuable landscape or cultural areas, has not be constituted as an obstacle for wind power construction. Also visibility of a wind turbine to other property does not hinder the construction. This is the interpretation in accordance with the case law, for example in the judgment *KHO 2013:184,* the court ruled that the visibility of the wind turbine does not constitute unreasonable harm for the property owner.

The landscape protection can still take place. It is not intended to protect all landscape that is defined to be valuable from all kind of changes. This would eventually lead that there could not be made any changes to the environment or otherwise use nature.

As pointed out in the guidelines of the Ministry of the Environment and in the national land use objectives, the wind turbines should always be located in big group in order to limit the environmental impacts to that specific area and not having many small wind farms across the country affecting more property owners and people in general. It should be pointed out that the regulations regarding the congenial and attractiveness of the environment and nature are not set

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[172] *Vesa* 2007 p. 44.

[173] See the newsletter of Energiavirasto in which according to only wind power projects submitted bids in the tendering. Available at: https://www.energiavirasto.fi/-/uusiutuvan-energian-tukikilpailutukseen-26-tarjousta?redirect=https%3A%2F%2Fwww.energiavirasto.fi%2Fuutisarkisto%3Fp_p_id%3D101_INSTANCE_c1lTKRwQcXY6%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2.

out concerning the property owners, but people in general. However, the property owners on the next to a neighbouring land are usually entitled to make a claim.

Regarding the north Finland, the special cultural places for Sami people should be taken into consideration, even though the purpose is not that wind power could not possible be built at all at the fell, actually it is the contrary if we look at the official recommendations which state that wind power plants should be built on top of the fells.[174] Also same kind of tolerance regarding Sami areas should be accepted than what is required everywhere else in Finland, for example it is accepted that wind turbines can be visible from nationally valuable landscape areas.

Hence the nature of zoning, it has always included co-ordination between different factors and weighting among them. In order to carry out the weighting, different impacts of the factors shall be assessed. It is important that the environmental impacts are studied sufficiently, that means examining the current situation of the environment, the impacts of the planned project and the possibilities to mitigate adverse effects and comparing different alternatives.[175] The assessment requirements for wind farm projects are wide; even if the EIA –procedure does not apply to the project, the planned project still requires assessments and reports to be carried out of the environmental impacts. The impacts on the landscape are examined widely and from long distances. *Vesa* considered that the assessment and valuation of the wind power projects is sufficient. It is rather paradoxical that wind power project developer has to use more time and money on the assessments of environmental impacts as the wind power in general is considered to be a good way environmentally to produce electricity.[176] If a wind power project is located in an area requiring planning, either a local detailed plan (or wind power plan) or area requiring decision shall be made.[177]

Constructing wind farm is possible only when the project is discovered suitable in a decision-making process that has included wider consideration regarding environmental values, community structure and land use than an ordinary building permit process.[178] The assessment requirements are necessary but I would say that they are sufficient in Finland. Sustainable development, promoting renewable energy and preserving historical values and biodiversity can all be taken into account and aligned together, even though they may also conflict. In such case decision-makers shall weight the different values. There should be more emphasis on aims

[174] Valtioneuvoston selonteko 2/2000 p. 38.
[175] *Jääskeläinen – Syrjänen* 2010 pp. 143.
[176] *Vesa* 2007 p. 46.
[177] Ympäristöministeriö 2002. p.23.
[178] *Kovari* 2014 p. 10.

of increasing renewable energy and promoting its development and the possibilities to install wind power plants.

The aims for renewable energy should be stated in the MRL as a guiding norm. At the moment, the principle of sustainable development is defining many sections in the MRL. The aim of renewable energy could be seen as part of the principle of sustainable development, but in order to effectively take the aims as part of the whole land use and zoning system, they should be stated separately. The necessary steps to be taken against climate change are not waiting long-lasting processes, action shall be taken now. Finland has undertaken to certain objectives and it should take measures to implement them. The land use and zoning system should support possibilities to build wind power plants, for example stating that “the aims for increasing renewable energy shall be taken into account in the land use and zoning”.